

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

WEST VIRGINIA BOARD OF  
VETERINARY MEDICINE,  
Complainant,

v.

Case No. 0415A

JOHN FABISH,  
Veterinarian License Number: 15-2014  
Respondent.

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CONSENT AGREEMENT AND ORDER

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After due investigation of a written complaint, the West Virginia Board of Veterinary Medicine (Board) determined that there was probable cause to believe that John Fabish (Respondent) has exhibited unprofessional and unethical conduct in the practice of veterinary medicine, in violation of the provisions of W. Va. Code § 30-10-1 *et seq.* and the Rules of the Board at W. Va. Code R. § 26-1-1 *et seq.* The Respondent was provided with written notice of the allegations against him pursuant to the rules of the Board and the laws of this State.

Now, in lieu of hearing, the parties have reached an agreement for the resolution of Case Number 0415A and the parties agree to entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That John Fabish is a licensee of the Board with license number 15-2014 and is subject to the license requirements of said Board.
2. The Board is a regulatory board created for the purpose of regulating the practice of veterinary medicine. W. Va. Code § 30-10-1 *et seq.*
3. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline an individual's veterinary medicine license because of authority granted to it by W. Va. Code §§ 30-10-5 and 30-10-19.
4. That on or about April 28, 2015, the Board received a written complaint from an individual complaining of the treatment that his animal had received while in the care of the Respondent.
5. The written complaint alleged that an approximate six month old female dog, Pepper, had been taken to Ark Animal Clinic (Ark) on April 7, 2014, for a spay.
6. Respondent performed the spay procedure; however, in September 2014 the Complainant brought Pepper back in for an examination since it appeared that she was in heat. Complainant left Pepper at Ark for a physical examination; however, upon his return Pepper had not yet been examined by Ark. Moreover, he alleged in his complaint that Pepper had been placed all day long in a kennel that was far too small for a dog her size.
7. Complainant stated that the Respondent insisted that it was merely a urinary tract infection and placed Pepper on antibiotics without a physical examination. Moreover, the Complainant stated that both the Respondent and staff were in fear of Pepper and said that she had been aggressive with them.

8. Again in March 2015, it appeared to the Complainant that Pepper was yet again in heat. Pepper was examined by the Respondent, and the Respondent agreed that Pepper was indeed in heat. He wanted to perform another spay procedure to remove the remaining ovarian tissue.

9. Pepper appeared to the Complainant the night following the second procedure to be “restless, and drank a lot of water.” Moreover, the next morning Pepper “still having difficulty laying still” and refused to eat anything. Complainant made arrangements to bring Pepper back to Ark; however, Pepper became distressed and the Complainant immediately took Pepper to Ark.

10. At Ark, CPR was attempted by Dr. Erick Hess, who owns Ark; however, Pepper died. Complainant alleges that Ark was unresponsive in his need for immediate attention for Pepper.

11. No necropsy was performed on Pepper to determine the cause of death.

12. Respondent did file a timely response to these allegations, and states that he did not improperly perform a spay procedure, but instead the second procedure revealed that “a follicle with a presumed but not visible ovarian remnant” had remained after the first procedure. Respondent states that Pepper had shown signs of aggression; although Ark always works with the animal and owner through these issues. Respondent states that he had physically examined Pepper when he came back the second time and that there were no signs that Pepper was in heat at the time. As far as the kennel, Respondent stated it met all standards as dictated by the Board, and he wanted to observe Pepper.

13. That those acts described in Paragraphs 1 through 12 above, demonstrate that the Respondent failed to provide the proper care and treatment of the dog identified as Pepper by failing to perform a proper spay procedure and failing to identify the signs of Pepper returning to estrous.

14. That upon recommendation of the Complaint Committee, after reviewing the complaint and accompanying documents, the Board, by majority vote, at its Board meeting on June 1, 2015, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against the licensee, John Fabish.

#### CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice veterinary medicine, pursuant to W. Va. Code § 30-10-11.
3. That the Board has defined unprofessional conduct by adopting the standards of practice at W. Va. Code R. § 26- 4-1 *et seq.* and violations of these standards of practice may be grounds for disciplinary action by the Board pursuant to W. Va. Code § 30-10-11(n).
4. That the Board served a *Complaint* upon the Respondent pursuant to the laws and regulations of West Virginia.

5. The Respondent's actions as outlined in the *Findings of Fact* constitute conduct, practices or acts in violation of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-9.1.e. and 26-4-4.1.

#### CONSENT OF LICENSEE

I, John Fabish, by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

2. That 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 herein.

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

4. That 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. That I admit that my actions were a violation of the Board's governing statute and rules.

The Respondent, John Fabish, by affixing his signature hereon, agrees to the following:

#### ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent is hereby REPRIMANDED for his actions in this case matter.

2. Respondent shall complete the following:

a. Respondent shall complete three (3) hours each of Board approved continuing education hours in following the designated areas: Pharmacology, Anesthesia, and Medical Record keeping.

b. Respondent shall complete the entire course offered by Human Alliance entitled "Veterinary Training Program."

c. 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. Payment shall be made no later than September 1, 2016.

d. Any or all of the continuing education hours that the Respondent is required to complete as part of this *Consent Agreement and Order* may be counted towards the Respondent's eighteen hours (18) hours of continuing education hours required for a renewal cycle of the year that the continuing education hours are completed by the Respondent.

e. All of the required continuing education hours shall be successfully completed no later than September 1, 2016.

3. Respondent shall be placed on probation for a period of one (1) year effective upon the entered date of this Agreement. During this probationary period the Respondent shall adhere to the following restrictions:

a. Respondent shall not be permitted to perform any spay procedures until such time he successfully completes and passes the course as noted above entitled "Veterinary Training Program" and offered by the Humane Alliance.

b. Respondent shall be subject to random inspections of his veterinary practice including, review of medical records and observation of any medical procedures. Respondent shall bear the cost of these random inspections by the Board which shall be payable to the Board within one (1) month of the inspection.

4. Any violation of this *Consent Agreement and Order*, or failure to adhere to its terms may result in further disciplinary action against the Respondent, including the immediate suspension of the Respondent's license to practice veterinary medicine, or the extension of the probationary period.

5. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the AAVSB Veterinary Practitioners Disciplinary Database.

6. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).

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

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

WEST VIRGINIA BOARD OF  
VETERINARY MEDICINE

By: Virginia Lee Hastings  
DR. JOHN WILSON - MS. Virginia Lee Hastings  
PRESIDENT Secretary - Treasurer

Entered: Feb 19, 2016  
DATE

Reviewed and agreed to by:  
John Fabish DVM  
John Fabish, Respondent

Feb 3 2016  
DATE

Albert Dunn, Jr.  
Albert Dunn, Jr., Esquire  
Counsel for Respondent

2/13/16  
DATE