

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,
Complainant,**

v.

Case No. 0415B

**ERICK HESS,
Veterinarian License Number: 9812
Respondent.**

CONSENT AGREEMENT AND ORDER

After due investigation of a written complaint, the West Virginia Board of Veterinary Medicine (Board) determined that there was probable cause to believe that Erick Hess (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 Code of State Rules at §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 Numbers 0415B. 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 Erick Hess is a licensee of the Board with license number 9812 and is subject to the license requirements of said Board. Moreover, Erick Hess is the owner of the Ark Animal Clinic (Ark).

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 on April 7, 2014, for a spay.

6. One of the Respondent's employees performed the spay procedure; however, the procedure ultimately had to be repeated due to ovarian fragment left behind in the first procedure.

7. Complainant also alleged that Pepper had been placed all day long in a kennel that was far too small for a dog her size, and that the staff at Ark were fearful of large dogs such as Pepper.

8. Sometime after the completion of the second procedure Pepper became distressed and the Complainant immediately took Pepper to Ark.

9. At Ark, CPR was attempted by the Respondent; however, Pepper died. Complainant alleges that Ark was unresponsive in his need for immediate attention for Pepper and was not waiting for his arrival at Ark.

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

11. Respondent did file a timely response to these allegations which included his medical records for this matter, and he states that he was responsive to Pepper upon her arrival and administered CPR and all lifesaving techniques; however it was too late. Respondent denies that the kennel was too small for Pepper. Moreover, the Respondent explained that since Pepper had demonstrated “cage aggression” on an earlier stay she was placed in a kennel that was not designed for running, but instead easier access for the staff.

12. The medical records in this case do not document any of the lifesaving efforts that the Respondent stated he performed on Pepper.

13. That those acts described in Paragraphs 1 through 12 above, demonstrate that the Respondent failed to document in medical records the prescribed treatment plan for CPR and the other life saving measures that were taken for the Complainant’s dog.

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, Erick Hess.

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 §30-10-19.

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 §30-10-19(g)(3).

4. That the Board served a *Complaint* upon the Respondent pursuant to the laws and regulations of West Virginia.

5. That the Respondent's actions constitute conduct, practices or acts in violation of W. Va. Code §30-10-19(g)(3) and W. Va. Code R. §§ 26-4-4.4.F. and 26-4-4.9.

CONSENT OF LICENSEE

I, Erick Hess, 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, Erick Hess, 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 matter.
2. Respondent shall complete three (3) hours of Board approved continuing education in the area of medical record keeping practice within six (6) months from the entered date of this *Consent Agreement and Order*. These three (3) hours may be obtained either in person or on-line; however, these three (3) hours are in addition to the standard requirement of eighteen (18) contact hours that a licensee must complete for license renewal.
3. Respondent shall reimburse the Board for the costs of these proceedings, including but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this case. This reimbursement shall be paid within six (6) months from the entered date of this *Consent Agreement and Order*.
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.
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: John R Wilson
DR. JOHN WILSON
CHAIRMAN

Entered: 7-9-2015
DATE

Reviewed and agreed to by:

Erick Hess
Dr. Erick Hess, Respondent

7/29/15
DATE