

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

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

v.

CASE NO. 1117B

**THOMAS J. McMAHON,
VETERINARIAN LICENSE NO. 8004,
RESPONDENT.**

CONSENT AGREEMENT AND ORDER

After due investigation of allegations received in a written complaint, the West Virginia Board of Veterinary Medicine ("Board") has determined the existence of probable cause to believe that Licensee Thomas J. McMahon ("Dr. McMahon") exhibited unprofessional conduct in the practice of veterinary medicine in violation of *West Virginia Code* §§ 30-10-1 to 30-10-23 and *West Virginia Code of State Rules* §§ 26-4-1 to 26-4-11. The Board gave Dr. McMahon written notice of the allegations against him and the opportunity to request an administrative hearing under the rules of the Board and the laws of this State. Rather than proceeding to an administrative hearing, the parties have agreed to the entry of the following *Consent Agreement and Order* to resolve and dispose of this matter.

FINDINGS OF FACT

The Board adopts the following factual findings:

1. Dr. McMahon is a licensee of the Board, holding License No. 8004, and is therefore subject to the license requirements of the Board.

2. On November 28, 2017, the Board received a written complaint from Terry Smart ("Mr. Smart") alleging that Dr. McMahon had not delivered competent veterinary care to Mr. Smart's seven-year-old female dog Isabella.
3. Dr. McMahon examined Isabella on November 1, 2017. Isabella presented with an inflamed left eye, had swollen eyelids, was blinking rapidly especially in the left eye, and she had excessive clear tears. Dr. McMahon diagnosed conjunctivitis, gave Isabella an injection of antibiotic, showed Mr. Smart how to put Neomycin Bacitracin Dexamethasone ointment into her eyes, and dispensed Primer 120 mg to be taken twice daily for five days. On November 6, 2017, Isabella's left eye was much improved and Dr. McMahon recommended continuing her medication.
4. On November 14, 2017, Isabella returned to Dr. McMahon. Isabella's left eye had developed an ulcer the night before. Dr. McMahon dispensed Tobramycin drops to the dog. On November 15, 2017, Dr. McMahon gave Mr. Smart Virginia Tech's phone number. Dr. McMahon contacted Virginia Tech and was told they could not see Isabella until November 24, 2017. Dr. McMahon then gave Mr. Smart the phone number to Ohio State University Medical Center in Columbus. Mr. Smart took Isabella to Ohio State University Medical Center on November 17, 2017, where they did a swab culture test of the dog's eye and provided several medications. Isabella's eye ruptured over the weekend, and it was enucleated on November 20, 2017.
5. The Board's Complaint Committee reviewed the complaint, Dr. McMahon's response, and the medical records and supporting documents. The Complaint Committee concluded that the dog's eye should have been stained before diagnosis or treatment and that there were deficiencies in Dr. McMahon's medical record keeping. The Complaint Committee found the existence of probable cause to recommend disciplinary action against Dr. McMahon, and recommended a finding of probable cause at the January 4, 2018 Board Meeting. After reviewing the complaint, the response, and the supporting documents, and based on the recommendation of the Complaint Committee, the Board found the existence of

probable cause that Dr. McMahon had violated *West Virginia Code* § 30-10-19(g)(3) and *West Virginia Code of State Rules* §§ 26-4-5.1.b and 26-4-5.2.a.

6. The Board issued a *Complaint and Statement of Charges* informing Dr. McMahon that it had found the existence of probable cause at its January 2018 Board Meeting.

CONCLUSIONS OF LAW

1. The Board is a state entity governed by *West Virginia Code* §§ 30-10-1 to 30-10-23. It is a regulatory board created for regulating the practice of veterinary medicine under *West Virginia Code* § 30-10-4. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke, impose probationary conditions, or otherwise discipline an individual's veterinary medicine license under *West Virginia Code* §§ 30-10-5 and 30-10-19 and *West Virginia Code of State Rules* §§ 26-1-9, and 26-2-1 to 26-2-6.
2. Dr. McMahon is a licensee of the Board, holding License No. 8004, and is therefore subject to the license requirements of the Board. The Board has jurisdiction to take disciplinary action against Dr. McMahon's license pursuant to the *West Virginia Code* and *West Virginia Code of State Rules* set out in the preceding paragraph.
3. The conduct described above in the *Findings of Fact* section would, if proven, constitute violations of *West Virginia Code* § 30-10-19 and *West Virginia Code of State Rules* §§ 26-1-9, 26-4-5.1.b, and 26-4-5.2.a. Such conduct is therefore grounds for disciplinary action.
4. After reviewing the complaint, the response, and the supporting documents, and based on the recommendation of the Complaint Committee, the Board found the existence of probable cause that by failing to stain Isabella's eye before diagnosing or starting treatments and by failing to maintain proper medical records, Dr. McMahon had violated *West Virginia Code* § 30-10-19 and *West Virginia Code of State Rules* §§ 26-1-9, 26-4-5.1.b, and 26-4-5.2.a.

CONSENT OF LICENSEE

I, Thomas J. McMahon, by signing this *Consent Agreement and Order*, acknowledge the following:

1. After having had the opportunity to consult with an attorney, 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 admit that my actions violated the statutes and rules of the Board of Veterinary Medicine.
6. I acknowledge that the execution of this document constitutes disciplinary action by the Board. It is therefore considered to be public information, and information regarding this matter is available to any employer, prospective employer, or any other individual who may inquire about the license status.

Thomas J. McMahon, by signing this *Consent Agreement and Order*, agrees to the following:

ORDER

Based on the foregoing, the Board does hereby ORDER and DECREE that:

1. Dr. McMahon will be placed on Probationary Status for a period of one year, which will begin on the date of entry of this *Consent Agreement and Order*.

2. Within six months after the date of entry of this *Consent Agreement and Order*, Dr. McMahon will complete six credit hours of Board-approved continuing education on the subject of record keeping or documentation. These six credit hours of continuing education will NOT count toward the continuing education requirements for license renewal. Dr. McMahon will submit to the Board a certificate of completion or other documentary proof that he successfully completed the six credit hours of continuing education on the subject of record keeping or documentation.
3. Within six months after the date of entry of this *Consent Agreement and Order*, Dr. McMahon will complete six credit hours of Board-approved continuing education on the subject of ophthalmology care. These six credit hours of continuing education will NOT count toward the continuing education requirements for license renewal. Dr. McMahon will submit to the Board a certificate of completion or other documentary proof that he successfully completed the six credit hours of continuing education on the subject of ophthalmology care.
4. Within six months after completing the required six credit hours of continuing education on record keeping or documentation and the required six credit hours of continuing education on ophthalmology care, Dr. McMahon will submit five patient records for review by the Board. Dr. McMahon must submit these five patient records to the Board no later than one year after the date of entry of this *Consent Agreement and Order*.
5. Within six months of the date of entry of this *Consent Agreement and Order*, Dr. McMahon will reimburse the Board for all administrative costs it incurred in the investigation and disposition of this case, which will include costs of the investigation, legal fees, and all other reasonable and necessary costs incurred by the Board.
4. This document is a public record as defined in *West Virginia Code* § 29B-1-2(4). 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.

5. Dr. McMahon understands and acknowledges that the failure to comply with all provisions in this *Consent Agreement and Order* may result in additional disciplinary action, up to and including the suspension of his license to practice veterinary medicine in the State of West Virginia.
6. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

WEST VIRGINIA BOARD OF VETERINARY MEDICINE

By: John R. Wilson
 Dr. John R. Wilson, Board Chairman

Entered: 4-11-2018
 Date

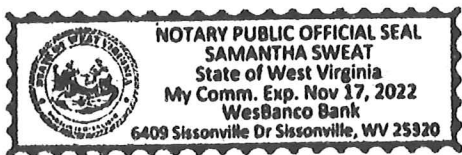
Agreed to by: Thomas J. McMahon
 Dr. Thomas J. McMahon, Respondent

4/3/18
 Date

This day personally appeared before me, the undersigned authority, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Thomas J. McMahon, whose name is signed to the foregoing document and who is known to me, acknowledged before me on this date that, having reviewed the contents of this document, he executed the document voluntarily on the date shown above. The Affiant verified that the statements in the foregoing instrument are complete, true and correct, to the best of his knowledge, information, and belief.

Given under my hand and seal on this the 3rd day of April 2018.

My Commission expires: NOV 17, 2022



Suzanne Guit
 Notary Public