

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

V.

CASE NOS. 0821A AND 0821B

**THOMAS J. MCMAHON, DVM,
VETERINARIAN LICENSE NO. 8004,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Thomas J. McMahon, DVM (“Respondent”) for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matters. As a means of compromise, the Board and Respondent hereby agree to resolve these matters 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 these matters.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle these matters 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. 8004, and at all times relevant, practiced veterinary medicine at Pocatalico Animal Hospital in Sissonville, West Virginia.

2. On or about August 2, 2021, the Board received a written complaint from Kathy Garner (“Ms. Garner”) regarding the veterinary care that her dog “Cheyenne” received from Respondent at Pocatalico Animal Hospital.¹

3. Ms. Garner’s complaint states that on or about June 2, 2021, she took Cheyenne to Pocatalico Animal Hospital to have an x-ray performed on her right shoulder. Ms. Garner maintains that Respondent informed her that Cheyenne did not need an x-ray, as he could assess by visual inspection that Cheyenne had nerve damage. Thereafter, Respondent prescribed medication for Cheyenne and sent them home.

4. Ms. Garner continues in her complaint that although she gave Cheyenne the prescribed medication for two weeks, Cheyenne’s condition got worse, which prompted her to return to Pocatalico Animal Hospital with Cheyenne on June 30, 2021 where she requested an x-ray. Ms. Garner states that Respondent “felt around on Cheyenne’s right shoulder,” determined that she had muscle loss and that there was no need to have an x-ray. Respondent prescribed a

¹ This complaint was designated by the Board as Case No. 0821A.

second medication for Cheyenne and said they should return in two weeks if her condition did not improve.

5. Ms. Garner asserts that because Cheyenne's condition continued to deteriorate, on July 5, 2021, she took Cheyenne to Kanawha Boulevard Animal Hospital for a second opinion. Dr. Lee performed an x-ray on Cheyenne, which detected severe cancer in her right shoulder. Ms. Garner maintains that she was advised that Cheyenne's cancer was so bad that her bone could snap at any minute, and that Cheyenne should be euthanized due to the extreme pain the dog was likely experiencing. Ms. Garner attempted to bring Cheyenne home, but upon arrival, she was unable to get out of the vehicle, so Ms. Garner returned to Kanawha Boulevard Animal Hospital where she was advised that Cheyenne's bone likely snapped getting into the truck. Accordingly, Cheyenne was euthanized.

6. On July 6, 2021, Ms. Garner returned to Pocatalico Animal Hospital where she requested that she be reimbursed for her office visits on June 2, 2021 and June 30, 2021, since Respondent refused to perform the requested x-rays, along with the expenses from her July 5, 2021 visit to Kanawha Boulevard Animal Hospital. Ms. Garner was informed that she would only be reimbursed for her July 5, 2021 visit to Kanawha Boulevard Animal Hospital because she would have had to pay for x-rays had Pocatalico Animal Hospital performed the same. Ms. Garner maintains that she would have paid for the x-rays, but Respondent refused to perform them and claimed they were not necessary.

7. By letter to Respondent dated August 2, 2021, the Board transmitted a copy of Ms. Garner's complaint and requested that Respondent file a written response thereto within 30 days.

8. The Board received Respondent's written response on or about September 1, 2021, which included one page of Cheyenne's medical records. Respondent states that he examined

Cheyenne on June 1, 2021, at which time he noted that she had complete muscle atrophy over her scapula and knuckling at the carpus, along with very poor pain response. Respondent maintains that he explained to Ms. Garner that Cheyenne had nerve damage, which may be permanent, and that Cheyenne was not a good candidate for leg amputation due to her size. Respondent states that he recommended that Cheyenne be euthanized, but that Ms. Garner refused, so Respondent administered anti-inflammatory medication to determine if there would be a return to function.

9. Respondent asserts that Ms. Garner returned with Cheyenne approximately four weeks later, at which time Cheyenne had lost weight, the atrophy in her muscle was more pronounced, and there was a large mass over the dog's proximal humerus. Respondent states that Cheyenne could not bear weight on the affected leg at all and was clearly in pain, so he advised that Cheyenne should be euthanized. Respondent maintains that Ms. Garner was unwilling to do what ultimately needed to be done, which was euthanize Cheyenne.

10. On or about August 9, 2021, the Board received a written complaint from Amanda Gibson ("Ms. Gibson") regarding the veterinary care that her dog "Mazy" received from Respondent at Pocatlico Animal Hospital.²

11. Ms. Gibson's complaint states that on August 5, 2021, she brought Mazy to Pocatlico Animal Hospital to have her teeth cleaned. Ms. Gibson asserts that when she returned to pick up Mazy that afternoon, she was informed that Mazy had not yet woken up from her sedation, so Ms. Gibson needed to wait in her car until Mazy woke up. After waiting approximately thirty (30) minutes, Ms. Gibson went inside to inquire about Mazy, and learned that Mazy had been challenging to sedate and that during the procedure, she had two teeth pulled.

² This complaint was designated by the Board as Case No. 0821B.

12. When Ms. Gibson was permitted to go see Mazy, she found Mazy laying unresponsive and breathing rapidly. Ms. Gibson states that she picked up Mazy, whose body was limp as if paralyzed and whose eyes were open with a fixed gaze, and then the dog began to gag, vomit, and urinate. Mazy was discharged to Ms. Gibson's care with the advice that the medicine would wear off throughout the night, but that Mazy passed away four hours later. Ms. Gibson states that Mazy was their second Pomeranian that passed away in the care of Respondent, and that Mazy had no preexisting health issues.

13. By letter to Respondent dated August 16, 2021, the Board transmitted a copy of Ms. Gibson's complaint and requested that Respondent file a written response thereto within 30 days.

14. The Board received Respondent's written response on or about September 15, 2021, which included one page of Mazy's medical records. Respondent notes that Mazy passed away at 8 ½ years old during a dental cleaning and extraction procedure. Respondent asserts that Mazy had two previous bouts of tracheitis from infected teeth and gums, and that this cleaning was the first dental cleaning Mazy had received. Respondent maintains that although he performs many dental cleanings on older dogs using anesthesia without incident, unfortunately, Mazy never recovered as expected from anesthesia and ultimately passed away. Respondent states that in forty (40) years of practicing veterinary medicine in West Virginia, he has had six cases of death due to anesthesia.

15. The Board's Complaint Committee reviewed the complaints of Ms. Garner and Ms. Gibson, Respondent's responses thereto, and the medical records submitted therewith. The Complaint Committee found probable cause to believe that Respondent is guilty of unprofessional conduct in his treatment and care of Cheyenne and Mazy and in responding to the aforementioned

complaints, which conduct constitutes violations of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-8, 26-4-5.2.a., 26-4-5.8.b., 26-4-5.8.c, and 26-4-5.8.d.

16. 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 January 6, 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. 8004, 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 and W. Va. Code R. §§ 26-1-8, 26-4-5.2.a., 26-4-5.8.b., 26-4-5.8.c, and 26-4-5.8.d. Such conduct is therefore grounds for disciplinary action.

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 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, Thomas J. McMahon, 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's license, License No. 8004, is hereby placed on PROBATION for a period of twelve (12) months beginning on the date of entry of this Order. During this period of probation, Respondent shall be subject to the following Board supervision requirements:

- a. Respondent shall be responsible for submitting four (4) medical records every month during the probationary period to the Board;
- b. If during the probationary period, the medical records Respondent submits continue to be insufficient, or if the Board receives one (1) more complaint in which it determines that probable cause exists to charge Respondent with one or more violations of the Board's governing statutes and rules, the Board will consider more severe action;
- c. Respondent shall be visited by a Board member or a person approved by the Board at least once per month, which supervisor shall assist Respondent with compliance with the Board's regulations; and
- d. 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.

2. 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.

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 anesthesia. These continuing education hours do not count toward the required eighteen (18) hours of continuing education

4. Any failure to comply with all provisions in this Consent Agreement and Order shall result in the immediate suspension of Respondent's license for the remainder of the

probationary period and may lead to additional disciplinary action, up to and including the further suspension or revocation of Respondent's license to practice veterinary medicine in the State of West Virginia.

5. 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.

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

Entered: 4-1-2022
Date

REVIEWED AND AGREED TO BY:

Thomas J. McMahon
Thomas J. McMahon, DVM
Respondent

3/30/2022
Date

This day personally appeared before me, Thomas J. McMahon, 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 30th day of March, 2022.

My Commission expires: JAN. 11. 2026

Karen Hill
Notary Public

