

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

v.

CASE NOS. 1222A AND 0323B

**KEVIN HENNESSY, DVM,
VETERINARIAN LICENSE NO. 8734,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Kevin Hennessy, 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. 8734, and at all times relevant, practiced veterinary medicine at Tri-State Animal ER (“Tri-State”) in Ceredo, West Virginia.

2. On December 28, 2022, the Board received a written complaint from Shari Shriver (“Ms. Shriver”) regarding the veterinary care that her cat “Sass” received from Respondent at Tri-State.¹

3. Ms. Shriver’s complaint stated that Sass was treated by Respondent at Tri-State on November 1-2, 2022 after Sass had ingested string. Ms. Shriver asserted that her fiancé brought Sass to Tri-State on November 1, 2022 at approximately 7:00 p.m., where Sass was examined and lab work and x-rays were taken for diagnostic purposes. Ms. Shriver stated that Sass began receiving fluids and an antibiotic via IV at approximately 9:45 p.m., and that she was checked hourly prior to her surgery, which began at approximately 5:30 a.m. on November 2, 2022.

4. Ms. Shriver asserted that Sass’s medical records noted that the surgery was complicated. Ms. Shriver maintained that Respondent described the sutures he used in the procedure and that he stapled Sass’s abdomen closed, but that Sass’s medical records failed to note the amount of time the surgery took to complete.

¹ This complaint was designated by the Board as Case No. 1222A.

5. Ms. Shriver stated that Sass was picked up, as instructed, when Tri-State closed on November 2, 2022 and transported to her local veterinarian, Tri-County Animal Clinic, where Sass stayed from November 2, 2022 through November 5, 2022. Sass was released on November 5, 2022, but Ms. Shriver noted that Sass was not improving at home and “visited the Tri-County Animal Clinic every other day (11/7, 11/9, 11/11) due to running fevers, no appetite, and making no drastic improvements.” Ms. Shriver stated that Sass’s condition did not improve despite changes to her medications and additional lab work drawn and x-rays taken, and so she brought Sass to Pittsburgh Veterinary Specialty & Emergency Clinic on November 12, 2022 at approximately 4:00 p.m.

6. Sass underwent exploratory surgery in Pittsburgh that evening, and while in surgery, the veterinarians discovered eight areas that were sutured with a “braided” suture, four areas of which were perforated. After obtaining consent from Ms. Shriver, the surgeon continued with Sass’s surgery and the result was removal of Sass’s perforated duodenum, removal of fifty percent of Sass’s colon, and both resections and anastomosis.

7. Ms. Shriver asserted that the braided suture Respondent used was contraindicated, and that the staples Respondent used on Sass had fallen out, which led to an opening in Sass’s incision. Ms. Shriver stated that Sass’s four perforated areas indicated that Respondent acted negligently in performing the surgery, which she believes ultimately led to Sass’s death.

8. By letter to Respondent dated December 28, 2022, the Board transmitted a copy of Ms. Shriver’s complaint and requested that Respondent file a written response thereto within 30 days.

9. The Board received Respondent’s written response, through his attorney, on March 9, 2023, which included Sass’s medical records. Respondent denied the allegations contained in

the complaint. Respondent stated that he examined Sass the evening of November 1, 2022, noted that she was hyperthermic and tachycardic, and noted that she had a palpable mass in her mid-abdomen. After reviewing Sass's bloodwork and x-rays, and after conducting his physical examination of Sass, Respondent determined that Sass had an intestinal blockage or soft tissue mass that required surgery. Respondent obtained consent and proceeded with the surgery.

10. Respondent provided a detailed explanation of the surgery he performed, which included a laparotomy and exploratory of Sass's abdomen, where he discovered "a linear foreign body which began at her distal ileum and extended into her duodenum." Respondent asserted that his veterinary technician checked for a string around Sass's tongue, but did not locate anything. Respondent stated that he packed off Sass's incision with sponges and performed eight enterotomies beginning at the ileum and following the string into the duodenum. Respondent maintained that he performed the surgery in such a way so as to prevent any trauma to the small intestine, and was careful to prevent leakage of the intestinal contents into the surgical site. Respondent stated that he discovered the string wrapped around the base of the tongue, and performed a gastrotomy to free the string, which he was able to retrieve from Sass's mouth.

11. Respondent described in detail the steps he undertook to perform the surgery and to maintain sterility. Respondent stated that the records indicated that Sass did not begin to receive care from Tri-County Animal Clinic until November 5, 2022, and thus, Sass went without antibiotics, pain medications, fluid therapy antiemetics or nutrition for approximately three days. Respondent maintained that all notes were prepared contemporaneously during Sass's treatment, and that Ms. Shriver failed to present any evidence that Respondent's suture was contra-indicated. Respondent denied that he failed to provide substandard care for Sass.

12. On March 17, 2023, the Board received a written complaint and supporting documentation from Elizabeth Sparks (“Ms. Sparks”), an employee of Tri-State, regarding the veterinary care that her cat “Pancake” received from Respondent at Tri-State.²

13. Ms. Sparks’s complaint stated that on December 14, 2022, she brought Pancake to Tri-State due to Pancake’s anorexia, vomiting, and increased vocalization. Ms. Sparks maintained that Respondent examined Pancake, and after reviewing Pancake’s bloodwork and radiographs, Respondent expressed concern about the existence of a foreign body within Pancake. Respondent recommended IV fluids, an enema, laxatone, and overnight hospitalization with additional radiographs the next morning.

14. Ms. Sparks stated that the morning of December 15, 2022, she transported Pancake to Ashland Animal Clinic for further hospitalization and care throughout the day. Ms. Sparks asserted that the veterinarian at Ashland Animal Clinic took additional radiographs and, after examining the same, determined that there was no suspicion of a foreign body and recommended that Pancake be discharged with medication.

15. Ms. Sparks stated that she returned to Tri-State for Pancake to be monitored throughout the evening of December 15, 2022, and that Respondent expressed concern for Pancake’s condition and recommended exploratory abdominal surgery, which he performed beginning at approximately 2:00 a.m. on December 16, 2022. Respondent informed Ms. Sparks that he noted an area of concern in Pancake’s duodenum for a stricture, and thus, he removed multiple inches of Pancake’s duodenum, along with a portion of her pancreas for the anastomosis to close properly. Ms. Sparks stated that after Pancake recovered from surgery, she transferred Pancake back to Ashland Animal Clinic the morning of December 16, 2022 for continued

² This complaint was designated by the Board as Case No. 0323B.

monitoring to determine if her pancreas would function. Ms. Sparks brought Pancake back to Tri-State the evening of December 16, 2022 for continued monitoring and additional bloodwork.

16. Ms. Sparks stated that she returned with Pancake to Tri-State on December 17, 2022 because Pancake was unable to eat or drink on her own, and because of swelling detected along the incision site. The veterinarian on duty, which was not Respondent, examined Pancake and determined that she had developed an abdominal wall hernia. Accordingly, Pancake underwent surgery again, where it was discovered that Pancake's abdominal wall sutures had separated.

17. Ms. Sparks described the additional medical care Pancake received from Tri-State and from Ashland Animal Clinic over the next few days. Ms. Sparks stated that on the afternoon of December 22, 2022, after Pancake vomited multiple times and appeared markedly lethargic, less responsive and jaundiced, she brought Pancake to Ashland Animal Clinic where the veterinarian performed an abdominal ultrasound and an aspirate. Ms. Sparks asserted that she was informed that Pancake had brown tinged/purulent fluid in her abdomen and that the anastomosis of the duodenum had likely failed. After being presented with the option of an abdominal exploratory and repair, Ms. Sparks opted to euthanize Pancake due to her poor prognosis.

18. By letter to Respondent dated March 20, 2023, the Board transmitted a copy of Ms. Sparks's complaint and requested that Respondent file a written response thereto within 30 days.

19. The Board received Respondent's written response, through his attorney, on May 1, 2023. Respondent denied the allegations contained in the complaint. Respondent stated that the surgery he performed on Pancake detected a severe stricture in the duodenum, which was dilated three to four centimeters and was extremely inflamed. Respondent asserted that he determined it would be necessary to dissect the pancreas from the section of the duodenum distal

to the stricture in order to perform anastomosis, that he explained his findings to Ms. Sparks and informed her that he had never dissected a pancreas from a surgical site of an anastomosis and could not promise a good outcome, and provided options to Ms. Sparks as to further treatment for Pancake. Respondent stated that Ms. Sparks elected to have him perform Pancake's surgery "[d]ue to financial constraints."

20. Respondent provided a detailed description of the surgery he performed on Pancake. Respondent maintained that he pressure tested the surgical site for any leaks at the end of the surgery, and that no leaks were detected. Respondent described the work he performed to attend to the surgery site and described the results positively. Respondent stated that all notes were prepared contemporaneously during Pancake's treatment, and that Ms. Sparks failed to present any evidence that he committed any wrongdoing in his treatment of Pancake.

21. The Board's Complaint Committee reviewed the complaints of Ms. Shriver and Ms. Sparks, Respondent's responses thereto, and the medical records submitted therewith.

22. Upon recommendation of the Complaint Committee, the Board, by majority vote at its meeting on May 19, 2023, found probable cause to believe that Respondent failed to provide appropriate pain management for Sass and for Pancake, and failed to perform adequate anesthesia monitoring during the anesthesia process for Pancake, 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.a., 26-4-5.1.b., 26-4-5.8.a., and 26-4-5.8.c. 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. 8437, 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, 26-4-5.1.a., 26-4-5.1.b., 26-4-5.8.a., and 26-4-5.8.c. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Kevin Hennessy, 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, Kevin Hennessy, 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. 8437, is hereby placed on PROBATION for a period of two (2) years 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;
- d. Respondent shall be responsible for any and all costs or fees charged by the Board-approved supervising veterinarian;

- e. Respondent's professional behavior and conduct shall be observed by his officer manager on a daily basis;
- f. Respondent shall be responsible for coordinating with his office manager to have him/her submit a monthly report to the Board; and
- g. Respondent shall be responsible for coordinating with the Board-approved supervising veterinarian to have him/her submit a report to the Board after each visit, including copies of patient records reviewed and verification of such review.

2. Within six (6) months from the date of entry of this Order, Respondent shall complete six (6) hours of Board-approved continuing education on the subject of veterinary pharmacy. 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 gastrointestinal surgery. These continuing education hours do not count toward the required eighteen (18) hours of continuing education.

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 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.

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 B Berkeley DVM
Dr. Keith Berkeley, Board Chair

Entered: 6 Sept. 2023
Date

REVIEWED AND AGREED TO BY:

KEVIN Keith Hennessy, DVM
Respondent
8/15/2023
Date

This day personally appeared before me, Keith Hennessy, 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 15 day of August, 2023.

My Commission expires: 3/22/2027



TAMRA TREDWAY
Notary Public
State of Ohio
My Comm. Expires
March 22, 2027

Tamra Tredway
Notary Public