

BEFORE THE KANSAS BOARD OF VETERINARY EXAMINERS

IN THE MATTER)
OF)
Alan Brownback, D.V.M.)
License No. [REDACTED])
Respondent)
_____)

Case No. 17014

FILED

JUL 23 2018

**KS BOARD OF
VETERINARY EXAMINERS**

Pursuant to K.S.A. 77-501 *et. seq.*

CONSENT AGREEMENT AND ORDER

NOW ON THIS 17th day of July, 2018, the above captioned matter comes before the Kansas Board of Veterinary Examiners ("Board"), by agreement with Alan Brownback, D.V.M. ("Respondent"), for the purpose of resolving the above captioned matter.

RECITATION AND RESPONDENT'S ACKNOWLEDGMENT OF FACTS

1. The Kansas Board of Veterinary Examiners is duly constituted under the laws of the State of Kansas, specifically under the Kansas Veterinary Practice Act, K.S.A. 47-817, *et seq.*
2. The Board, through its Investigative Committee, received certain information, investigated that information, and determined that probable cause exists to believe the Respondent committed certain acts which violate the Kansas Veterinary Practice Act, K.S.A. 47-817, *et seq.*
3. Alan Brownback, D.V.M. ("Respondent") is and was at all times relevant to this matter licensed by the Board to practice veterinary medicine in Kansas pursuant to K.S.A. 47-817 and amendments thereto. Board records reflect that the Respondent was issued veterinary license number [REDACTED] on or about June 6, 1979. The Respondent's license to practice veterinary medicine in Kansas is current and will expire on June 30, 2019.
4. The Board has the express jurisdiction of these proceedings to take disciplinary action against the license of any veterinarian licensed under the Kansas Veterinary Practice Act, K.S.A. 47-817, *et seq.*, pursuant to K.S.A. 47-821, K.S.A. 47-830, and K.S.A. 47-842.
5. On or about October 5, 2017, information was received by the Board indicating that the Respondent may have violated certain provisions of the Kansas Veterinary Practice Act or the Kansas Administrative Regulations governing the practice of veterinary medicine in Kansas. A subsequent investigation revealed the following facts to be established by a preponderance of evidence:

- a. On or about October 5, 2017, Respondent was presented with a dog, "Mini," for a routine spay. Respondent did not meet with or talk to Mini's owner, [REDACTED] ("Owner") prior to the planned procedure.
- b. Respondent failed to maintain adequate patient records, which included failure to document Mini's age or date of birth, color, or markings. Respondent failed to document Mini's weight prior to the planned procedure. Further, Respondent failed to document a complete record of physical examination findings prior to the planned surgery.
- c. Respondent initiated the procedure using Romifidine as the gas anesthesia. There is no information contained in the patient's medical record if the patient was monitored during this surgery.
- d. During the procedure, Mini's heart stopped.
- e. Respondent's associate, Teri D. Swander, D.V.M., assisted Respondent with cardiopulmonary resuscitation on Mini. However, the cardiopulmonary resuscitation efforts were not successful.
- f. Respondent ordered and/or administered Zofran and epinephrine to Mini during this procedure, which included the cardiopulmonary resuscitation; however, Respondent failed to document the administration of any medication in Mini's medical record.
- g. Respondent called Owner and told her that Mini had a reaction to the anesthetic, and she did not survive the surgical procedure.

CONCLUSIONS OF LAW

6. Board Members consisting of and serving as probable cause reviewers met and reviewed the information obtained relative to this matter. The determination of the Board's probable cause reviewers was that probable cause does exist to believe the Respondent Alan Brownback, D.V.M. is in violation of the following Kansas Statutes and/or Kansas Administrative Regulations:

K.S.A. 47-830(o)(4): Violation of or attempting to violate, directly or indirectly, any provision of the Kansas Veterinary Practice Act or any rules and regulations adopted pursuant to such act. Specifically:

- a. K.A.R. 70-7-1(h)(2)(A): Patient records. Patient identification. Patient identification shall include the patient's name, species, breed, age or date of birth, sex, color, and markings.
- b. K.A.R. 70-7-1(h)(2)(D): A complete record of the physical examination findings and treatment or services rendered.
- c. K.A.R. 70-7-1(i): Medication records. The veterinarian shall ensure that each dose of a medication administered is properly recorded on the patient's medical record.

- d. K.A.R. 70-8-1(b): ... [D]emonstrating a willful or careless disregard for the health, welfare or safety of the patient.
- e. K.A.R. 70-8-1(k): Failing to establish a valid veterinarian, client, and patient relationship.

7. It is agreed between the Board and the Respondent that any violation of any provision of the Kansas Veterinary Practice Act constitutes grounds for revocation or suspension or other discipline of the Respondent's veterinary license pursuant to K.S.A. 47-830, and imposition of a fine not to exceed \$5,000 per violation pursuant to K.S.A. 47-830.

8. It is agreed between the Board and Respondent that the above violations have been established by a preponderance of evidence.

HOWEVER, the Board and Respondent mutually desire to enter into this Consent Agreement and Order in lieu of adjudicative proceedings to resolve the alleged violations.

WHEREFORE, the Respondent hereby waives all right to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas Administrative Procedure Act regarding the facts regarding the above violations.

WHEREFORE, the Respondent waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review in relation to the facts set forth herein.

WHEREFORE, the Respondent does not contest the determinations of the Board members and does not contest that a preponderance of evidence demonstrates the above-referenced findings of the Board members.

WHEREFORE, in consideration for not initiating further disciplinary action against Respondent in relation to the violations cited herein so long as the Respondent complies with the terms of this Consent Agreement and Order, the Respondent hereby consents and agrees to the following terms of settlement as resolution of this matter.

TERMS OF SETTLEMENT

1. The Respondent is fined \$500.00, due within thirty (30) days from the time this Consent Agreement and Order takes effect. The Respondent agrees this is a fine and is not dischargeable in bankruptcy.

2. Respondent will submit to the Board's investigator the policy from Lyndon Veterinary Clinic in Lyndon, Kansas regarding how an animal is monitored during a surgical procedure. This policy will be submitted to the Board's Investigator within thirty (30) days from the time this

Consent Agreement and Order takes effect.

3. If Lyndon Veterinary Clinic does not have a policy regarding how an animal is monitored during a surgical procedure, Respondent shall create such policy and submit this policy to the Board's Investigator within thirty (30) days from the time this Consent Agreement and Order takes effect.

4. Additionally, Respondent will submit to the Board's investigator the policy from Lyndon Veterinary Clinic in Lyndon, Kansas regarding the emergency resuscitation of an animal. This policy will be submitted to the Board's Investigator within thirty (30) days from the time this Consent Agreement and Order takes effect.

5. If Lyndon Veterinary Clinic does not have a policy regarding the emergency resuscitation of an animal, Respondent shall create such policy and submit this policy to the Board's Investigator within thirty (30) days from the time this Consent Agreement and Order takes effect.

6. Respondent shall submit to the Board at its offices located at P.O. Box 379, Wamego, Kansas, 66547, the fine remittance and documents required by this Consent Agreement and Order.

7. Further, Respondent shall successfully complete the on-line continuing education course titled, "Veterinary Medical Records" from the Iowa State University College of Veterinary Medicine available at:

<https://vetmed.iastate.edu/about/continuing-education/veterinary-medical-records>

8. In the alternative, Respondent may propose to the Probable Cause Committee for their consideration an alternate medical record keeping course in lieu of the aforementioned course.

9. Respondent shall complete this course within ninety (90) days from the time this Consent Agreement and Order takes effect, and he shall provide proof of successful completion of the above course to the Board at its offices located at P.O. Box 379, Wamego, Kansas, 66547, within fourteen (14) days of the successful completion of the above course.

10. All foreseen and unforeseen expenses to complete the aforementioned course including travel, lodging, program fee, meals, etc., shall be at Respondent's own expense.

11. These hours shall be in addition to those continuing education hours required for renewal of license.

ACKNOWLEDGMENTS AND AFFIRMATIONS

12. Respondent acknowledges that he has read this Consent Agreement and Order in its entirety and affirms that he enters into this agreement voluntarily, after opportunity to consult with counsel, if desired, and with the full understanding of its consequences. Respondent executes and submits this Consent Agreement and Order to the Board with the acknowledgment that if accepted and approved, it shall be given the same force and effect as a FINAL ORDER of the Board entered as a result of a formal hearing. Respondent acknowledges that the negotiation process leading to this Consent Agreement and Order is not and was not an adjudicative hearing.

13. This Consent Agreement and Order constitutes the entire agreement between the Board and Respondent and cannot be modified without written authorization of both parties.

14. It is the responsibility of Respondent to take any and all appropriate measures, including financial responsibility for any and all costs, to comply fully with this Consent Agreement and Order (except where costs are expressly attributed otherwise).

15. Respondent acknowledges that any failure to comply with the terms of this Consent Agreement and Order shall result in the issuance of an order to appear before an Investigative Committee of the Board or the Board itself to show cause as to why further disciplinary action should not be taken.

PUBLICATION OF THIS CONSENT AGREEMENT AND ORDER

16. Respondent acknowledges that once adopted by the Board, this Consent Agreement and Order becomes a public document available for inspection at any time by members of the public. Additionally, Respondent acknowledges that a summary of this document may be made known to the public by publication in the Board's newsletter and/or by a press release issued by the Board and a report made to the National Disciplinary Database.

RELEASE OF LIABILITY

17. In consideration for the execution of this Consent Agreement and Order and written acceptance by the Board, Respondent Alan Brownback, D.V.M., his executors, administrators, successors and assigns hereby releases and forever discharges the State of Kansas, the Board of Veterinary Examiners, and each of its members, agents and employees in their individual and representative capacities from any and all manners of action, causes of action, suits, debts, judgments, executions, claims and demands whatsoever known and unknown in law and equity that the Respondent has ever had, now has, may have or claim to have against any and all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this action, this Order or its administration.

WHEREFORE, the provisions above are consented to and are hereby made a FINAL ORDER OF THE KANSAS BOARD OF VETERINARY EXAMINERS for the above captioned matter which becomes effective on the date indicated in the below Certificate of Service.

IT IS SO ORDERED.

Signed:

Jay Hedrickson
On behalf of the Board of Veterinary Examiners

APPROVED AND CONSENTED TO BY:

Alan Brownback
Alan Brownback, D.V.M.

7/10/18
Date

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of July, 2018, a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. Mail, first class postage prepaid, addressed to:

Alan Brownback, DVM



Respondent

Jane E. Weiler, No. 25276
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612
Attorney for the Board

and the original filed with:

Kansas Board of Veterinary Examiners
P.O. Box 379
Wamego, Kansas 66547

A handwritten signature in cursive script, reading "Cheryl Merritt", written over a horizontal line.

For the Kansas Board of Veterinary Examiners