

BEFORE THE KANSAS BOARD OF VETERINARY EXAMINERS

IN THE MATTER)
)
 OF)
)
 Matthew Zupka, D.V.M.)
 License No. [REDACTED])
 Respondent)
)

Case No. 18001

FILED

JUN 21 2018

KS BOARD OF
VETERINARY EXAMINERS

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

CONSENT AGREEMENT AND ORDER

NOW ON THIS 20th day of June, 2018, the above captioned matter comes before the Kansas Board of Veterinary Examiners ("Board"), by agreement with Matthew Zupka, 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. Matthew Zupka, 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 May 17, 1996. The Respondent's license to practice veterinary medicine in Kansas is current and will expire on June 30, 2018.
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 January 10, 2018, 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 March 25, 2017, Respondent provided the spring vaccinations to an equine, "Foxy". The owner ("Owner") of Foxy was present during these vaccinations.
- b. Owner told Respondent that she would be transporting Foxy to New Mexico in October 2017. Respondent drew blood work for a Coggins test on March 25, 2017.
- c. Prior to July 2017, Owner called Respondent twice to ask about the result of the Coggins, and she asked Respondent to send her a copy of the Coggins report. Each time, Respondent told Owner that he would send her a copy of the Coggins report.
- d. In July 2017, Owner when to Respondent's office and she asked for a copy of the Coggins. Again, Respondent told Owner that he would send her a copy of the Coggins report.
- e. In September 2017, Respondent sent to Owner a copy of the Coggins report. The Coggins report indicated that the blood was drawn on August 5, 2017.
- f. Additionally, Respondent failed to complete the documentation correctly on the Coggins form. Respondent identified Foxy as black and white; however, Foxy is a bay and white paint.

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 Matthew Zupka, D.V.M. is in violation of the following Kansas Statutes and/or Kansas Administrative Regulations:

A. 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:

- i. K.A.R. 70-7-1(h)(2)(D): A complete record of the physical examination findings and treatment or services rendered.

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.

9. 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.

10. 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.

11. 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.

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

13. 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

14. 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.

15. Respondent shall all 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.

16. Respondent shall submit to the Board's Investigator a protocol that Respondent develops to ensure that any lab work is submitted to the testing lab in in a timely manner, ensure that the results are obtained in a timely manner, and that he notifies the owners of the results of the lab work in a timely manner. This protocol shall be in the form of a checklist that will be included in the medical record of a patient having blood work completed. Further, this checklist will remain with the medical record, and the checklist made available to the Board upon request. This protocol/checklist will be submitted to the Board's Investigator within thirty (30) days from the time this Consent Agreement and Order takes effect.

17. Respondent shall be responsible for any costs and expenses incurred in satisfying the terms of this Consent Agreement and Order.

ACKNOWLEDGMENTS AND AFFIRMATIONS

18. 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.

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

20. 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).

21. 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

22. 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

23. In consideration for the execution of this Consent Agreement and Order and written acceptance by the Board, Respondent Matthew Zupka, 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:

Joey Holbrook
For the Board of Veterinary Examiners

APPROVED AND CONSENTED TO BY:

Matthew Zupka
Matthew Zupka, D.V.M.

4/14/18
Date