BEFORE THE KANSAS BOARD OF VETERINARY EXAMINERS

IN THE MATTER	)	
	)	
OF	)	
TROY D. SMITH, DVM	)	Case No. 19054
License Number: 5763	)	
Respondent	)	
	)	

Pursuant to K.S.A. Chapter 77

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 18th day of March, 2020, the above captioned matter comes before the Kansas Board of Veterinary Examiners ("Board"), by agreement with Troy D. Smith, D.V.M. ("Respondent"), for the purpose of resolving the above captioned matter.

The parties knowingly and voluntarily agree as follows:

1. 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 *et seq.*, and amendments thereto. Board records reflect that the Respondent was issued veterinary license number 5763 on or about May 31, 1990. The Respondent's license to practice veterinary medicine in Kansas is current and will expire on June 30, 2020.

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2. On or about October 28, 2019, 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 September 30, 2019, the complainant took her dog Bandit to the Mulvane Animal Clinic ("Clinic") located in Wichita, Kansas.
   b. Bandit was diagnosed with Parvo by another veterinarian.
   c. On October 1, 2019, the complainant returned to the Clinic for a reevaluation. Respondent completed medical records regarding this visit. The medical records did contain a record of the treatment provided to Bandit; however, Respondent's documentation did not include any physical examination findings.
   d. Further, the medical records for October 2, 2019, and October 3, 2019, do not included any physical examination findings.

APPLICABLE LAW

3. K.S.A. 47-816(h)(1): Practice of veterinary medicine means, "To diagnose, treat, correct,

change, relieve, or prevent animal disease, deformity, defect, injury or other physical or mental condition; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia or other therapeutic or diagnostic substance or technique on any animal including but not limited to acupuncture, surgical or dental operations, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to render service or recommendations with regard to any of the above and all other branches of veterinary medicine."

4. K.S.A. 47-830(o)(4): The Board, in accordance with the provisions of the Kansas Administrative Procedure Act, may refuse to issue a license, revoke, suspend, limit, condition, reprimand or restrict a license to practice veterinary medicine or an institutional license for 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, K.A.R. 70-7-1(h)(2)(D): Each veterinarian shall ensure that all patient records are legible and made contemporaneously with treatment services rendered; and contain a complete record of the physical examination findings and treatment or services rendered.

5. K.S.A. 47-842: In addition to the board's authority to refuse licensure or impose discipline pursuant to K.S.A. 47-830, and amendments thereto, the board shall have the authority to assess a fine not in excess of $5,000 against a licensee for each of the causes specified in K.S.A. 47-830, and amendments thereto. Such fine may be assessed in lieu of or in addition to such discipline. The proceedings under this act shall be conducted in accordance with the Kansas Administrative Procedure Act, and the board shall have all the powers granted therein.

6. Respondent and the Board mutually desire to enter into this Consent Agreement and Final Order in lieu of further summary and adjudicative proceedings.

7. Respondent understands that by entering into this Consent Agreement and Final Order Respondent waives all rights to further adjudication of facts and law that could be determined pursuant to summary proceedings or a hearing conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* in relation to Case No. 19054.

8. Respondent waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.* in relation to Case No. 19054.

9. The Board accepts Respondent's waiver of rights and stipulations.

ORDER

WHEREFORE, the Board finds that Respondent is in violation of K.S.A. 47-830(o)(4), as defined in K.A.R. 70-7-1(2)(D), in that Respondent failed to include any physical examination findings in the medical records for Bandit.

NOW THEREFORE, Respondent consents to the following terms and conditions, and the Board orders that:

10. Within sixty (60) days of the effective date of this Consent Agreement, Respondent shall successfully complete the on-line continuing education course titled, "Veterinary Record Keeping" available at: Veterinaryrecordkeeping.com

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

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

13. Respondent shall all submit to the Board at its offices located at P.O. Box 379, Wamego, Kansas, 66547, any documents evidencing completion of the requirements required by this Consent Agreement and Final Order.

14. After completion of the actions set out in the Consent Agreement and Final Order, Respondent will have no remaining obligations to the Board in relation to this case. However, Respondent may be subject to further enforcement action if Respondent fails to comply with the terms, conditions, and requirements imposed by this Consent Agreement and Final Order.

15. The matters referred to in this Consent Agreement and Final Order shall not be grounds for future action against Respondent, except the extent that that such matters may be relevant for future disciplinary or licensure proceedings in the Board's consideration of the factors identified in K.S.A. 47-829 [Licenses; expiration; renewal; continuing education requirements], and K.S.A. 47-830 [Grounds for refusal to issue or revocation or suspension of license or other restriction], for establishing rehabilitation or a pattern of conduct.

16. Except as provided in paragraph 15, this Consent Agreement and Final Order shall operate as a complete release of all claims the parties may have against each other pending before the Board and arising out of the Board's investigation of these matters. Respondent agrees not to file, or cause to be filed, any litigation or claims in any federal or state court of law or federal or state administrative agency against the Board, its agents, Board members, or employees, individually or in their official capacity. Such litigation or claims include, but are not limited to, any K.S.A. Chapter 60 or Chapter 61 civil action regarding negligence and/or a 42 United States Code action and/or any administrative petition for redress. Respondent agrees that all actions in this matter were a bona fide use of administrative discretion on the part of the Board, its members, and employees, which is a statutory exception to liability within the Kansas Tort Claims Act, K.S.A. 75-6104(b), (c) or (e).

17. Respondent agrees that this Consent Agreement and Final Order conforms to Kansas and federal law and that the Board has jurisdiction to enter into it and enter the Final Order provided for herein.

18. Respondent understands that a notification of this Consent Agreement and Final Order shall be provided to any other state licensing board or entity if Respondent is also licensed, registered or certified in another state.

19. This Consent Agreement and Final Order shall be a public record in the custody of the Board. Additionally, this Consent Agreement and Final Order may be made know to the public by publication in the Board's newsletter and/or by a press release issued by the Board.

20. This Consent Agreement and Final Order constitutes the entire agreement of the parties and may only be modified by order of the Board or by a subsequent writing signed by the parties. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

21. This Consent Agreement and Final Order shall become effective on the date indicated in the Certificate of Service.

WHEREFORE, the parties consent to these provisions, which are hereby made the Final Order of the Kansas Board of Veterinary Examiners in the above-captioned case.

IT IS SO ORDERED.

Signed: Joan E. "Jody" Johnson, DVM
On behalf of the Board of Veterinary Examiners

APPROVED AND CONSENTED TO BY:

Troy D. Smith, DVM
Troy D. Smith, D.V.M., Respondent

03/16/2020
Date

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of March, 2020, a true and correct copy of the above and foregoing Consent Agreement and Final Order was deposited in the U.S. Mail, first class postage prepaid, addressed to:

Troy D. Smith, D.V.M.
[redacted]

and by email to: jane.weiler@ag.ks.gov

Jane E. Weiler, No. 25276
Assistant Attorney General
Attorney for the Board

For the Kansas Board of Veterinary Examiners