

**STATE OF MARYLAND
DEPARTMENT OF AGRICULTURE
BEFORE THE STATE BOARD OF VETERINARY MEDICAL EXAMINERS**

IN THE MATTER OF:

DR. KATHLEEN LACKEY

DOCKET NO. 17-14

LICENSE NO. 3733

* * * * *

DEFAULT DECISION AND ORDER

Under State law, the State Board of Veterinary Medical Examiners ("Board") is the licensing authority responsible for regulating the practice of veterinary medicine in this State, which includes filing disciplinary actions against veterinarians charged with violating provisions of the Veterinary Practice Act, Agriculture Article Sections 2-301 – 2-316, Annotated Code of Maryland and related Code of Maryland Regulations (COMAR). Under this authority, the Board "may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee . . . if the veterinarian . . . [f]ails to comply with Board rules and regulations after receiving a license [.]” Md. Code Ann., Agric. Section 2-310(8). In addition, the Board may impose a civil penalty of not more than \$5,000 for a first offense or \$10,000 for a second or subsequent offense in lieu of or in addition to suspending or revoking a veterinarian’s license. Md. Code Ann., Agric. Section 2-310.1.

FINDINGS OF FACT

1. At all times relevant to these charges, Dr. Kathleen Lackey was a licensed veterinarian (License No. 3733) and at one time was the owner of Elk Neck Veterinary Clinic (License No. 07-003) located at 1657 Turkey Point Road, North East, MD 21901.
2. In August of 2016, Dr. Lackey closed her practice, Elk Neck Veterinary Clinic, without notifying her clients of a means by which they could obtain copies of medical records for the animals treated by Dr. Lackey.
3. Subsequently, clients went to Elk Neck Veterinary Clinic and found the hospital was closed. Clients attempted to reach Dr. Lackey by telephone and email to obtain records, but were unable to reach Dr. Lackey or leave her a voice mail message. One such owner filed a formal complaint with the SBVME in

November of 2016. After that complaint was received, Board investigator Susan Husk asked Dr. Lackey to respond and to include in her response information about how clients could obtain copies of medical records.

4. On or about December 15, 2016, Dr. Lackey emailed Investigator Husk to inform her that the clinic had been in foreclosure since February of 2016 and closed on August 15, 2016. Dr. Lackey stated that she had been providing clients with records, on request, by email, hard copy, and regular mail.

5. The Board considered this reply to be inadequate, given the difficulties clients had experienced making contact with Dr. Lackey. On December 23, 2016, Investigator Husk sent Dr. Lackey a letter via certified mail asking her to provide the Board with a written plan for making medical records available to clients by January 22, 2017.

6. On January 23, 2017, Dr. Lackey emailed Investigator Husk to report that she had provided some clients with records but did not have a formal plan for providing records to all of her clients. Dr. Lackey indicated that she would forward a formal plan to the Board when she had one. Dr. Lackey also said that she would update the website and Facebook page for Elk Neck Veterinary Hospital to reflect the closure of the clinic.

7. On March 15, 2017, Board member Dr. Perry Crowl, on behalf of the Board, wrote Dr. Lackey another, similar letter, again asking her to provide information about how her former clients could obtain records and also offering the Board's assistance in developing a solution. Dr. Lackey did not respond to that letter.

8. The Elk Neck Veterinary Hospital facility has been purchased by a nonprofit rescue and all the remaining records are now in the possession of the purchaser. The Facebook page for Elk Neck Veterinary Hospital has still not been updated to show that the facility is closed or to provide information to clients about how to obtain records.

9. The Veterinary Practice Act, Agriculture Article § 2-310(8), Annotated Code of Maryland, states that the Board may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing, if the veterinary practitioner . . . "[f]ails to comply with Board rules or regulations after receiving a license." COMAR 15.14.01.15 requires licensed veterinarians to comply with requests to appear before the Board and with requests to produce documents or other evidence the Board has requested.

10. COMAR 15.14.01.10E provides that for pet companion animals, patient records shall be kept by a veterinarian for 3 years after a patient's last visit. COMAR 15.14.01.10F requires that if requested by the patient's owner, a veterinarian shall release a copy of the animal's written record to the owner or subsequent treating veterinarian (subject to payment of reasonable costs).

11. On May 24, 2017, the Board formally charged Dr. Lackey with a violation of COMAR 15.14.01.10F.

12. The charging document ("Charge") was sent to Dr. Lackey at her address of record by certified mail, return receipt requested, with a Notice of Agency Action letter ("Notice") explaining that Dr. Lackey had the right to a hearing before the Board if requested within ten days from receipt of the Charge. In the alternative, the Notice stated that Dr. Lackey could waive a hearing and accept the proposed sanctions. (See Notice of Agency Action Letter and Charge under the Maryland Veterinary Practice Act, attached as Exhibit 1).

13. On or about June 19, 2017, the Board received confirmation from the United States Postal Service of receipt of the Notice and Charge by Dr. Lackey on June 14, 2017. (See United State Postal Service, PS Form 3811, attached as Exhibit 2).

14. After receiving this confirmation, the Board received no response written or otherwise from Dr. Lackey or anyone acting on her behalf.

15. On July 25, 2017, the Board issued a Memorandum and Order of Default ("Order of Default"), which was also sent by certified mail, return receipt requested to Dr. Lackey at her address of record, 2076 Loma Linda Way, Clearwater, FL 33763. The Order of Default notified Dr. Lackey that she had fifteen days to file a motion seeking to vacate the Order of Default. (See Order of Default, attached as Exhibit 3).

16. On August 29, 2017, the Board received confirmation from the United States Postal Service of receipt of the Memorandum and Order of Default by Dr. Lackey on August 23, 2017. (See United State Postal Service, PS Form 3811, attached as Exhibit 4).

17. Because more than fifteen days have passed since the Order of Default was issued and served on Dr. Lackey and the Board has not received a motion to vacate from Dr. Lackey or her legal counsel, the Board

may now issue this Default Decision and Order and impose the sanctions below. See COMAR 15.01.01.03C (explaining Departmental process of issuing default orders and default decisions and orders).

CONCLUSIONS OF LAW

As a licensed veterinarian in Maryland, Kathleen Lackey, DVM, License No. 3733, is subject to the jurisdiction of the Board. By failing to maintain patient records for three years in a manner that allows owners to obtain copies of those records and by failing to have a process in place to make records available on the request of owners, Dr. Lackey violated the Veterinary Practice Act and related regulations, specifically COMAR 15.14.01.10 (Record Keeping). In addition, by failing to respond to the Board's formal requests to provide a plan for providing patient records, Dr. Lackey violated Agriculture Article, § 2-310(8) and COMAR 15.14.01.15 (Complying with Certain Requests of the Board).

ORDER

Having determined that Kathleen Lackey, DVM, License No. 3733, has not filed a timely response to the Order of Default issued in this matter, and that she has waived her opportunity for a hearing after being afforded notice of the Board's action (including notice of: (1) the charge against her, (2) the proposed sanction, (3) her opportunity to request a hearing, including what she must do to receive a hearing, and (4) the direct consequences for failing to exercise in a timely manner her opportunity for a hearing, namely, the entry of a Default Decision and Final Order and the imposition of the proposed sanction), the Board, on this 21st day of September, 2017,

ORDERED that:

- a. Dr. Kathleen Lackey shall pay a civil penalty of \$1,000, to "Maryland Department of Agriculture" at 50 Harry S. Truman Parkway, Annapolis, MD, 21401, within 30 days of this Order with the notation "SBVME - 17-14"; and
- b. Dr. Lackey's License No. 3733 shall be suspended for a period of one year from the date of this Order.

WITNESS the hand and seal of the State Board of Veterinary Medical Examiners, State of Maryland, this

28th day of September, 2017.

**STATE BOARD OF VETERINARY
MEDICAL EXAMINERS**



David L. Handel, DVM

President

State Board of Veterinary Medical Examiners

Maryland Department of Agriculture

50 Harry S. Truman Parkway, Room 102

Annapolis, Maryland 21401

Telephone: 410. 841.5862

REVIEW RIGHTS

Within 30 days from the date of this decision, an aggrieved party may note an appeal to the Secretary of the Maryland Department of Agriculture by sending a written request for administrative review to the Secretary of Agriculture with a copy to the Board. The written request for administrative review shall be sent to each by registered or certified mail, return receipt requested (the mailing address for the Secretary is: Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401). The decision of the Secretary is the final agency decision for purposes of judicial review by the circuit court under the Administrative Procedure Act.

Enc Exhibit 1 - Notice of Agency Action and Charge

Exhibit 2 - Postal Service Green Card – stamped June 14, 2017 (evidencing service of Notice of Agency Action and Charge)

Exhibit 3 - Order of Default

Exhibit 4 - Postal Service Green Card – stamped August 23, 2017 (evidencing service of Order of Default)