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

IN THE MATTER OF: *

DENNIS G. FOSTER, D.V.M. * **DOCKET NO. 17-25**

LICENSE NO. 868 *

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 20th day of April, 2018, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Dennis G. Foster, D.V.M. ("Dr. Foster"), License No. 868. This Consent Agreement resolves the charges filed by the SBVME on or about March 1, 2018 in Docket No. 17-25 alleging that Dr. Foster violated the Veterinary Practice Act , Agriculture Article, §§ 2-301 – 2-316, Annotated Code of Maryland, and related Code of Maryland Regulations ("COMAR") 15.14.01 – 15.14.17 set forth herein.

By letter dated March 7, 2018, Dr. Foster advised the Board of his decision to waive a right to a hearing on the charges and indicated that he would enter into a consent agreement with the Board accepting the penalties proposed. By entering into this Consent Agreement, Dr. Foster waives the right to a hearing and an appeal on the charging document in Docket Number 17-25.

Under Maryland law, the SBVME 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 the provisions of the Veterinary Practice Act and related COMAR regulations adopted pursuant to this law. As part of its authority, the SBVME "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. Art., §2-310(8). The Board may also 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, respectively. Md. Code Ann., Agric. Art., § 2-310.1 In setting the amount of a civil penalty, the Board shall consider the severity of the violation, the good faith of the violator, and any history of prior violations, as well as the Board's regulatory civil penalty standards. Md. Code Ann., State Gov't Art. § 10-1001(b); COMAR 15.14.11 (Civil Penalty Standards for Veterinarians).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dennis G. Foster, D.V.M., License Number 868, by entering into and signing this Consent Agreement, agrees to the provisions of this Consent Agreement, acknowledging that the SBVME has sufficient evidence to find, as fact, and to conclude as a matter of law that Dr. Foster, as owner and Responsible Veterinarian of Dundalk Animal Hospital, License No. 03-009, violated COMAR 15.14.01.18A-D (Animal Boarding by a Veterinarian) in connection with boarding, treatment, and care of "Millie, " a six-year-old Bernese Mountain dog owned by JoAnn Gilbert, as follows:

1. At all times relevant to these charges, Dr. Dennis G. Foster, DVM ("Dr. Foster"), was a licensed veterinarian (License No. 868) in this State. He has been licensed in this State since 1957. Dr. Foster has a significant disciplinary history with the Board, including a civil penalty assessed in 1995 for a professional conduct violation, a Consent Agreement entered into in 2005 involving charges of substandard care, a Consent Agreement entered into in 2006 involving substandard care and a record keeping violation, a Consent Agreement entered into in 2012

finding professional judgment and record keeping violations and in which a $5,000 civil penalty was assessed, and a Civil Penalty Final Order in 2012 for expired medication violations.

2. At times relevant to these charges, Dr. Foster was the owner and responsible veterinarian at Dundalk Animal Hospital ("Hospital") (License No. 03-009), located at 7810 Wise Avenue, Dundalk, MD 21222. Hospital also has a commercial boarding kennel associated with it.

3. On or about December 24, 2016, JoAnn Gilbert ("Ms. Gilbert") took her six-year-old spayed Bernese Mountain dog, Millie, to Hospital for boarding. In addition to boarding, Millie was also scheduled to be bathed by Dawn Knight ("Ms. Knight"), the groomer at Hospital, on December 26, 2016.

4. At approximately 7:45 a.m. on December 26, 2016, after Millie had been boarded for several days, Ms. Knight arrived at Hospital to begin her work shift. Ms. Knight proceeded to retrieve Millie for bathing and found that Millie was unable to stand. At that time, Ms. Knight determined that Millie was too sick for grooming. However, there were no veterinarians on site when Ms. Knight discovery the condition, because no veterinarian was scheduled to arrive until 10:00 a.m. that day.

5. According to Ms Knight, at approximately 10:00 a.m. the same day, she informed Dr. Rex Pfeiffer ("Dr. Pfeiffer") ("License No. 2162), a relief veterinarian at Hospital, about Millie's condition. There is no evidence that any immediate action was taken. No one from Hospital contacted Ms. Gilbert, Millie's owner.

6. Later in the day, at approximately 1:30 p.m., Ms. Gilbert, unaware that Millie was experiencing any physical problems, called Hospital to see if Mille was done with her bath and was ready to go home. At that time, Ms. Gilbert was informed that Millie had not been bathed or groomed but was waiting to see a doctor because she could not walk.

7. Ms. Gilbert went to Hospital. She was taken into an exam room by Dr. Pfeiffer, where Millie was on a blanket breathing heavily and unable to raise herself. Dr. Pfeiffer told Ms. Gilbert that Millie had been unable to walk that morning and had a temperature of 104.6. Dr. Pfeiffer then took radiographs of Millie's chest and legs but found nothing abnormal.

8. Initially, Ms. Gilbert planned to wait and take Millie to her regular veterinarian the next day. However, Dr. Pfeiffer insisted that Ms. Gilbert either take Millie to her regular veterinarian immediately or take the dog to an emergency hospital, explaining that Millie might have had a neurological problem. At that point, Ms. Gilbert understood how grave Millie's condition was and became alarmed.

9. At 4:00 p.m. on December 26, 2016, Ms. Gilbert took Millie to her regular veterinarian at Honeygo Animal Hospital Inc., ("HAH"), (License No. 03-108). Dr. Mark Wright ("Dr. Wright") (License No. 5193) was Millie's attending veterinarian. Dr. Wright established an IV catheter and started IV fluids, giving Millie an injection of Cefazolin, an anti-bacterial medication. After running blood work, Dr. Wright was unable to come to a diagnosis, so he recommended that Ms. Gilbert take Millie to an emergency hospital to receive 24 hour care.

10. Ms. Gilbert immediately took Mille to Animal Emergency Hospital ("AEH"), (License No. 12-031), where Dr. Wendy Saubier ("Dr. Saubier") (License No. 5961), was Millie's attending veterinarian. After staying at AEH overnight, by the next day, December 27, 2016, Dr. Saubier advised Ms. Gilbert that Millie still could not stand or walk. Dr. Saubier suspected a polyarthritis/meningitis syndrome. Dr. Saubier had given Millie a single dose of steroids and saw some improvement. Dr. Saubier recommended that Millie see a specialist; however, her prognosis was guarded. After considering all of the circumstances, including costs already

incurred, Millie's age, and the fact that Ms. Gilbert could not lift or carry Millie by herself, Ms. Gilbert reluctantly chose to have Millie euthanized.

11. Ms. Gilbert filed a complaint with the Board against Hospital, alleging that Hospital provided substandard care to Millie during the time Millie was boarded at Hospital. While Ms. Gilbert did not claim, and the Board does not find, that Hospital caused Millie's medical condition, Ms. Gilbert was troubled by the fact that a veterinarian did not examine Millie immediately after Ms. Knight discovered that Millie was unable to walk, or, at minimum, as soon as a veterinarian arrived on the premises. Instead, several hours elapsed between the time Ms. Knight discovered Millie's condition and when Millie was examined by a veterinarian. Ms. Gilbert believes that Hospital should have called her as soon as Millie's condition was discovered so that she could have made decisions about treatment and possibly take measures to make Millie more comfortable.

12. The Board investigated Ms. Gilbert's complaint and obtained medical records from the various providers, including records from Hospital. The records from Hospital do not contain any documentation regarding the care Millie received while boarded at Hospital, including when she was fed, when she was walked, or any information regarding Millie's physical condition while boarded.

13. Although Dr. Foster was not present at Hospital on December 26, 2016, as responsible veterinarian for Hospital, he was responsible for providing direct supervision and control of the facility. *See* COMAR 15.14.03.01B(5).

14. Pursuant to COMAR 15.14.01.18, a veterinarian who operates an animal boarding business in connection with a veterinary hospital is responsible for caring for boarded animals, training staff on the care of boarded animals, instructing staff to report to the veterinarian on duty

if a boarded animal is sick or injured; and for arranging for the veterinary care of any sick or injured animal.

Based on the foregoing findings of fact, the SBVME, concludes Dr. Foster as owner and responsible veterinarian of Dundalk Animal Hospital, License No. 03-009, failed to comply with the requirements of the Veterinary Practice Act and related regulations, specifically COMAR 15.14.01.18A-D (Animal Boarding by a Veterinarian) as follows:

1. Hospital staff failed to record and document the care Millie received while boarded at Hospital, including notations as to when the dog was fed, walked, and whether the dog was acting well or unwell;

2. Dr. Foster failed to train Hospital staff on caring for boarded animals and to ensure that staff was checking on the animals regularly;

3. Hospital failed to have in place or to follow an emergency protocol to ensure that a veterinarian examines a sick animal as soon as the sickness is discovered; and

4. Dr. Foster failed to establish protocols and/or other procedures and/or to ensure that staff provided timely care to Millie. Instead, despite the dog's distress, Millie was left waiting alone for several hours before a veterinarian examined her.

Taking the facts and circumstances into consideration, including the nature of the violation, the veterinarian's prior disciplinary history at the time of the complaint, and his good faith efforts to resolve this matter promptly, the Board concluded that the most reasonable and appropriate resolution includes the following sanctions.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of April, 2018, by the State Board of Veterinary Medical Examiners, ORDERED that for violation

of COMAR 15.14.01.18A-D (Animal Boarding by a Veterinarian), Dr. Foster is assessed the following sanctions:

(a) Dr. Fosters shall pay a civil penalty of $750.00, for each of the four violations described above, for a total civil penalty of $3,000, payable to the "Maryland Department of Agriculture" with the notation "SBVME – 17-25," within thirty (30) days of the date of this Order. The Board acknowledged full payment of the civil penalty by check received on March 13, 2018;

(b) Dr. Foster shall serve a period of probation of six months. While on probation, the veterinarian shall obey all laws and regulations governing the practice of veterinary medicine in this State and the conditions of this Consent Agreement. The veterinarian shall promptly respond to document requests from the Board for copies of medical records for Board review to ensure compliance with Board regulations. Violation of probation means that the veterinarian is charged and the Board ultimately concludes that the veterinarian violated the Veterinary Practice Act, related regulations, or the terms of this Consent Agreement during the period of probation. Violation of probation may result in additional disciplinary action by the Board; and

(c) As an additional condition of probation, Dr. Foster shall submit to the Board within thirty (30) days from the date of this Consent Agreement a detailed protocol governing the handling, assessment, and care of animals boarded at Dundalk Animal Hospital, as well as forms to be used by staff for the daily care of boarded animals. This protocol must be approved by the Board, and if not

approved, Dr. Foster shall revise the protocol in accordance with Board instructions until it is accepted by the Board.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this 26th day of April, 2018.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

David Handel, D.V.M.
President
State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Dennis G. Foster, D.V.M., acknowledge that I have had an opportunity to consult with counsel before entering into this Consent Agreement. By this Consent, I hereby acknowledge the legal authority and jurisdiction of the Board over this matter and to issue and enforce this Consent Agreement. In order to resolve this matter, I agree to accept and submit to the foregoing Consent Agreement, consisting of 8 pages. I sign this Consent Agreement without reservation as my voluntary act and deed after having had an opportunity to consult with counsel, and I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Agreement.

4-24-18
Date

Dennis G. Foster, D.V.M.

NOTARY

STATE OF MARYLAND
CITY/COUTY OF BALTIMORE

I HEREBY CERTIFY that on this 24 of April, 2018 before me, a Notary Public of the City/County aforesaid, personally appeared Dennis G. Foster, D.V.M, and made oath in due form of law that the foregoing Consent Agreement was his voluntary act and deed.

AS WITNESS my hand and notarial seal.

Notary Public
My commission expires:
5-5-2019