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

IN THE MATTER OF:	*	
BILLY W. BENSON, D.V.M. LICENSE NO. 2720	*	DOCKET NO. 19-73
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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 21st day of March 2022, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Billy W. Benson, D.V.M. ("Dr. Benson"), License No. 2720. This Consent Agreement resolves a case arising from a complaint filed on or about May 5, 2019, in Docket No. 19-73, alleging that Dr. Benson violated the Veterinary Practice Act, Md. Code Ann., Agric. §§ 2-301 – 2-316 and related Code of Maryland Regulations ("COMAR") 15.14.01 – 15.14.17 set forth herein.

Before issuing formal charges, the Board, through its counsel, engaged in discussions with Dr. Benson to reach an agreed resolution of this case. By message dated March 10th, 2022, Dr. Benson notified the Board of his agreement to the terms and conditions reflected in this Consent Agreement. By signing this Consent Agreement, Dr. Benson agrees to waive his right to a hearing on the charges in Docket No. 19-73 and further agrees to the terms and conditions of this Consent Agreement.

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. 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. §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

lieu of or in addition to suspending or revoking a veterinarian's license, respectively. Agric. § 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 civil penalty standards. Md. Code Ann., State Gov't. § 10-1001(b); COMAR 15.14.11 (Civil Penalty Standards for Veterinarians).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Billy W. Benson, D.V.M., License Number 2720, by entering into and signing this Consent Agreement, having had the opportunity to seek the advice of counsel, 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. Benson violated COMAR 15.14.01.07 (Professional Judgment and Practice) and COMAR 15.14.01.10A (Record Keeping) as set forth herein:

1. Dr. Benson is a veterinarian licensed to practice in Maryland, where he has been licensed since 1984. Dr. Benson was, at the time of the events described herein, the owner and responsible veterinarian at Advanced Veterinary Complex ("Hospital") (License No. 03-062 located at 501 Main Street, Reisterstown, MD 21136.

2. Dr. Benson has an extensive disciplinary history with the Board. In April of 2000, the Board issued an order finding Dr. Benson guilty of a violation of COMAR 15.14.01.04 (Professional Conduct) arising from Dr. Benson's attempt to remove a tattoo from a human patient. Dr. Benson paid $500.00 in civil penalties, had his license suspended for one year (with all but two weeks stayed), and served five years of probation, which he completed. In 2013, the Board entered a Civil Penalty Final Order against Dr. Benson finding record keeping violations. In January of 2016, Dr. Benson entered into a Consent Agreement with the Board arising from his failure to maintain patient records for a minimum of three years in violation of COMAR 15.14.01.10F, whereby he paid a $1,200.00 civil penalty, completed an online record keeping course, and served six months of probation.

3. In July 2016, Dr. Benson saw Bailee, an approximately 9-year-old spayed female Labrador retriever owned by Stanley Tyszko ("Owner" or "Mr. Tyszko"), for a second opinion on Bailee's right rear leg, which had been painful since December of 2015. After confirming an anterior cruciate ligament

("ACL") aka a cranial cruciate ligament ("CCL") injury, Dr. Benson discussed a referral to a specialist for a tibial plateau leveling osteotomy ("TPLO").

4. Mr. Tyszko opted to have Dr. Benson perform a lateral suture technique, the lowest cost option. Dr. Benson explained to Mr. Tyszko that the lateral suture technique that he performs is not optimum for dogs over 50 pounds. According to Dr. Benson, Mr. Tyszko stated that he understood and consented to ACL surgery on Bailee's right rear leg at AVC, and Bailee recovered well.

5. Almost two years later, on June 30, 2018, Dr. Benson saw Bailee again when she presented for non-weight-bearing on her left rear leg after chasing a deer. Dr. Benson diagnosed Bailee with a torn left ACL and again discussed a possible referral for a TPLO. Once again, Mr. Tyszko decided to have Dr. Benson perform the same lateral suture procedure on Bailee's left hind leg since Bailee had recovered so well after her right ACL repair by Dr. Benson in 2016. Again, the cost of having Dr. Benson perform the surgery was less than it would be at an orthopedic specialty practice.

6. On July 2, 2018, Dr. Benson performed a left lateral suture repair on Bailee. During the surgery, Dr. Benson found that Bailee also had damaged the medial meniscus on her left leg, which he removed/repaired. Bailee's post-operative medications and treatments were the same as those she received in 2016. Unfortunately, the second surgery did not have as favorable an outcome as the first.

7. When Bailee was not recovering as well as she had from previous surgery, Dr. Benson told Mr. Tyszko that a TPLO could still be performed at a specialty practice. According to Dr. Benson, Mr. Tyszko declined a referral due to cost. Dr. Benson and Mr. Tyszko discussed swim therapy and braces. Dr. Benson stated that he did not have any experience with braces for ACL injuries. Mr. Tyszko emailed Dr. Benson information about websites that offered leg braces, but he never heard back from Dr. Benson.

8. With Bailee continuing to suffer from post-op complications, Mr. Tyszko took Bailee to several other veterinary facilities seeking further guidance to make Bailee more comfortable.

9. Eventually, after Mr. Tyzko sought additional options regarding Bailee's post-operative status and recovery, Mr. Tyzko opted to have an orthopedic specialist perform an arthrotomy and "exploration of (Bailee's) lateral suture and metallic crimp." The surgeon noted the presence of a significant amount

of purulent synovial fluid when he opened Bailee's left stifle joint. Samples of the joint fluid and the implants were sent out for culture and sensitivity, and histopathology. Bailee's aerobic culture showed light growth of meth-resistant staph pseudintermedius.

10. After Bailee was discharged, Bailey was seen at an orthopedic specialty practice for several post-op appointments. Bailee was treated on an outpatient basis, and she underwent several weeks of laser therapy, magnetic field therapy, and hydrotherapy.

11. On May 29, 2019, at Bailee's eight-week post-op recheck appointment, the orthopedic surgeon noted upon physical exam that Bailee had severe weight-bearing lameness in her left hind limb, and Bailee was "occasionally non-weight-bearing in the gait phase, and mostly non-weight-bearing at a stance." Bailee was found to have significant muscle atrophy in her left hind limb. Bailee's "left stifle palpation revealed mild to moderate effusion, significant thickening, significant crepitus and instability." Bailee had mild discomfort on palpation of the left iliopsoas and quadriceps muscles. Bailee's right stifle had mild effusion and moderate thickening. There was mild instability, moderate crepitus during Bailee's range of motion exam, and "her right hip was moderately limited in extension." Bailee's surgical incision had healed.

12. Further post-operative care, including home exercises and medications, was recommended. In addition, the orthopedic specialist advised Mr. Tyszko that if Bailee's chronic pain could not be resolved, the next steps included a total knee replacement, altering the pain medications or amputation of Bailee's left leg if it was the source of Bailee's chronic pain.

13. Subsequently, Mr. Tyszko filed a complaint with the Board alleging that in 2018 and 2019, Dr. Benson provided substandard care to Bailee during her post-op follow-up visits at the Hospital. Mr. Tyszko alleges that Bailee had swelling around her left stifle and was constantly limping after surgery, but Dr. Benson never wanted to take radiographs to determine what was causing Bailee's post-op lameness. Dr. Benson told Mr. Tyszko that Bailey would need to be on pain medications for the rest of her life. Dr. Benson did not offer any other options for treating Bailee to make her more comfortable.

Finally, Mr. Tyszko alleges that if Dr. Benson had performed a more thorough post-op exam before April 2, 2019, Bailee's "hardware would not have caused such an infection to ruin her knee."

14. The Board opened a file and investigated the complaint, which included obtaining and reviewing the medical records from the Hospital and the specialists who subsequently treated Bailee. Following its review, the Board concluded that Dr. Benson provided substandard care.

15. COMAR 15.14.01.07A (Professional Judgment and Practice) provides that: "[a] veterinarian, when caring for and treating a patient, shall conform to those minimum standards of care and treatment which are customary among veterinarians in this State." Dr. Benson failed to satisfy the applicable standard by failing to recognize that Bailee was not improving during the post-operative period, by not recommending aggressive diagnostics to determine whether other treatment or management might improve Bailee's condition, and by generally not investigating Bailee's continued pain and other complaints and offering options for treatment. At a minimum, if Dr. Benson was not going to address Bailee's pain and symptoms, he should have referred Mr. Tyszko to another veterinary practitioner for evaluation and/or treatment sooner, rather than waiting for Mr. Tyszko to seek other options himself.

Taking the facts and circumstances into consideration, including the nature of the violation(s), the veterinarian's significant disciplinary history, his acceptance of responsibility, and good faith cooperation in resolving this matter, the Board concluded that the most reasonable and appropriate resolution includes the sanctions set forth below.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 21st day of March, 2022, by the State Board of Veterinary Medical Examiners, ORDERED that:

(a) For violating COMAR 15.14.01.07A (Professional Judgment) in his care and treatment of Bailee, an approximately 9-year-old spayed female Labrador retriever, owned by Stanley Tyszko, by offering only pain medication for Bailee's continued complaints without making any effort to perform diagnostics or to consider other

options to treat Bailee or to make her more comfortable, Dr. Benson is assessed a civil penalty of $10,000;

(b) Dr. Benson shall pay the civil penalty within sixty (60) days from the date of this Consent Agreement by check payable to the Maryland Department of Agriculture ("MDA") with the notation "SBVME – 19-73" sent to the MDA at 50 Harry S. Truman Parkway, Annapolis, MD 21401;

(c) Half of the civil penalty ($5,000) shall be paid as a donation to the Baltimore County Humane Society, 1601 Nicodemus Road, Reisterstown, MD 21136, in the name of Bailee Tyszko. This charitable contribution may not be used as a tax deduction on any business or personal income tax return, and Dr. Benson shall sign a document provided by the Board verifying that Dr. Benson shall take no deduction;

(d) Dr. Benson's license to practice veterinary medicine shall be suspended for six months, with all but three weeks stayed, if Dr. Benson complies with the terms and conditions of this Consent Agreement. The three weeks of suspension may be served non-consecutively, one week at a time, but Dr. Benson must complete the total of three weeks of suspension within six (6) months from the date of this Consent Agreement. Dr. Benson shall advise the Board a week in advance of each week during which he intends to serve the suspension under this Consent Agreement;

(e) Dr. Benson shall serve a period of probation of two years. 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. 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 probation period. Violation of probation may result in additional penalties, including the lifting of any sanctions imposed but stayed under this Order, following notice and an opportunity to be heard; and

(f) To determine whether Dr. Benson has complied with the terms of his probation, Dr. Benson will be required to provide the Board with samples of medical records, including records reflecting the post-operative examination and treatment of patients undergoing orthopedic surgery. Dr. Benson shall be proactive in addressing post-operative complaints by offering and documenting offers of diagnostic measures to assess patient recovery. To the extent that a patient requires a referral to a specialist, such referral must be offered and documented in the medical record, along with the client response. Dr. Benson shall document all services offered to any client and subsequently declined. Each time services are declined due to costs, that fact should be reflected in the record. A client's decision to decline services for financial reasons in the past does not excuse a veterinarian's failure to offer necessary services in the future, and the record should reflect that risks of any treatment options have been explained to a client and what, if any, recommendations have been declined;

(g) Dr. Benson shall also develop a list of providers who can provide post-operative therapies and care for patients that have not recovered as expected. Dr. Benson shall also create instructions for post-operative orthopedic surgery care to be provided to clients. These written materials should be submitted to the Board for input and approval within forty-five (45) days from the date of this Order;

(h) Dr. Benson must also take proactive measures to ensure that his veterinary hospital complies with the Board's minimum sanitary requirements for veterinary facilities found in COMAR 15.14.03; and

(i) As an additional condition of probation, Dr. Benson shall complete 12 hours of continuing education ("CE") which addresses orthopedic surgery and post-operative care. Before completing the CE, Dr. Benson shall obtain approval from the Board that the CE proposed is appropriate to satisfy the terms of this Consent Agreement. The CE shall be completed and verification of completion provided to the Board

within 120 days from the date of this Order. Verification should be sent by email to Nathaniel Boan, Executive Director, at mda.veterinaryboard@maryland.gov. Proof from the CE provider shall include the veterinarian's name, the number of hours of CE completed, the topics covered, and the date(s) the CE was given. This CE will not count toward the 18 credit hours required annually for re-registration of the veterinary license. To verify completion of the annual CE requirements and the CE required by this Consent Agreement, the Board may conduct an audit of the veterinarian's CE records for relevant years; and

(j) This Consent Agreement is a public document.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this 21st day of March, 2022.

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Elizabeth Callahan, D.V.M.
President
State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Billy W. Benson, 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 to issue and enforce this Consent Agreement. To resolve this matter, I agree to accept and submit to the foregoing Consent Agreement, consisting of 9 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.

Date: March 18, 2022

Billy W. Benson, DVM

Billy W. Benson, D.V.M.