

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

IN THE MATTER OF:

KEVIN SMITH, DVM
LICENSE NO. 4456

DOCKET NO. 22-87

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 25th day of October 2022, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Kevin Smith, DVM ("Dr. Smith"), License No. 4456. This Consent Agreement resolves a case arising from a complaint filed on March 7, 2022, with the SBVME, which was assigned Docket No. 22-87, alleging that Dr. Smith 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, as set forth herein.

On September 2, 2022, during a telephone conversation with Board counsel, Dr. Smith, having been advised in writing regarding his due process rights, agreed to resolve this case under the terms and conditions of this Consent Agreement. By signing this Consent Agreement, Dr. Smith agrees to waive his right to formal proceedings in this case, including the issuance of charges and a hearing 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 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. § 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. 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

Kevin Smith, DVM, License Number 4456, by entering into and signing this Consent Agreement, having had the opportunity to seek the advice of legal 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. Smith did not satisfy COMAR 15.14.01.07 (Professional Judgment) or COMAR 15.14.01.10A (Record Keeping) as described below:

1. Dr. Smith is a veterinarian licensed to practice in Maryland, where he has been licensed since 1995. At the time of the events described herein, Dr. Smith was the owner and responsible veterinarian at Beltway Animal Hospital ("BAH") (License No. 03-006), located at 8702 Loch Raven Boulevard, Baltimore, MD 21286. Dr. Smith had a prior disciplinary action in 2001, which resulted in the entry of an order finding professional judgment and record keeping violations and the imposition of a civil penalty, plus six months of probation.
2. This case involves care and treatment provided to Zelda, an 11-year-old spayed female mixed dog owned by Tavia Mick ("Owner" or "Ms. Mick").
3. On December 8, 2021, Ms. Mick's father, Timothy Vines ("Mr. Vines"), took Zelda to the Hospital because Zelda was not eating and was vomiting. Dr. Smith was Zelda's attending veterinarian.
4. Dr. Smith performed a physical exam and submitted a complete blood count ("CBC") and chemistry panel to Antech.
5. On December 9, 2021, Mr. Vines took Zelda back to BAH because Zelda was still vomiting. Dr. Smith performed abdominal radiographs on Zelda and noted that she appeared to have an intestinal obstruction.

6. Dr. Smith performed an exploratory laparotomy on Zelda the same day and removed a foreign body (presumed to be a corn cob) from her duodenum. Dr. Smith stated that the remainder of Zelda's "viscera" seemed normal, but the pyloric region of her stomach seemed stretched. Zelda was discharged from BAH on December 10, 2021.

7. On December 13, 2021, Zelda returned to BAH because her incision was draining, and she was not eating. Dr. Smith noted in the medical record that Zelda was depressed, and her temperature was 102. Dr. Smith submitted a CBC and chemistry panel to Antech.

8. From December 14 to December 17, 2021, Dr. Smith provided treatment for Zelda's draining incision. Zelda's incision was flushed and cleaned daily, and Dr. Smith prescribed her doxycycline 100 mg.

9. On March 1, 2022, Mr. Vines and Ms. Mick's mother, Pamela Vines ("Ms. Vines"), took Zelda to BAH because she was having trouble breathing. According to Ms. Mick, she arrived at BAH shortly after Mr. and Ms. Vines did.

10. With Mr. Vines in the exam room, Dr. Smith performed a physical exam on Zelda. Dr. Smith noted that Zelda was depressed and her lungs were congested. Dr. Smith told Mr. Vines that he would have to admit Zelda and take radiographs to assess Zelda's condition. Mr. Vines consented and left BAH.

11. Dr. Smith performed chest radiographs on Zelda, which he interpreted to suggest that she had cancer. While taking radiographs, Zelda became dyspneic on the radiology table, so Dr. Smith gave her oxygen. Zelda's breathing improved. Dr. Smith also administered Lasix and dexamethasone to Zelda.

12. Dr. Smith then called Mr. Vines and asked him to return to BAH so that Mr. Vines could see Zelda, look at her radiographs, and discuss treatment recommendations.

13. Once Mr. Vines arrived, Dr. Smith told him that Zelda had a grave prognosis. Dr. Smith stated that he discussed with Mr. Vines whether to perform a thoracocentesis on Zelda to remove the fluid from around her lungs. However, BAH does not have an ultrasound machine, so Dr. Smith decided against it. Dr. Smith recommended that Mr. Vines take Zelda to an emergency hospital for further care. Dr. Smith

also discussed the options of palliative care at home or humane euthanasia with Mr. Vines. Mr. Vines elected to take Zelda home.

14. According to Dr. Smith, when BAH assistant Cathy Cree (“Ms. Cree”) was taking Zelda back to Mr. Vines, Zelda collapsed. However, Ms. Mick alleges that Ms. Cree “dragged” Zelda out into the waiting room by her leash. Ms. Mick stated that Zelda’s belly was dragging on the floor, and she could not walk on her own. According to Dr. Smith, Ms. Mick was not present when Mr. Vines elected to take Zelda home.

15. BAH’s medical records state that Dr. Smith told Mr. Vines again that Zelda's condition was grave. Mr. Vines elected to hospitalize Zelda at BAH for the night. According to Dr. Smith, after Mr. Vines left BAH, he discussed Zelda's prognosis with Ms. Vines at home. Mr. Vines then called BAH and elected to euthanize Zelda. Dr. Smith stated that Zelda passed away on the exam table before he gave any medications to her.

16. On March 7, 2022, Ms. Mick filed a complaint with the SBVME against Dr. Smith, alleging that Dr. Smith provided substandard care to Zelda.

17. The Board opened a case, investigated, and reviewed the materials gathered, including the medical records for Zelda’s treatment. After considering the evidence, the Board concluded that Dr. Smith provided substandard care to Zelda and that his records were incomplete and deficient.

18. 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. Smith did not satisfy the applicable standard in his care and treatment of Zelda by taking radiographs with only one view and not labeling the radiographs. In addition, Dr. Smith should not have suggested thoracentesis to remove fluid around the lungs because the radiographs alone did not justify that procedure. A thoracentesis is usually done when there are pockets of fluid visible; this was not the case in Zelda's radiographs. Regarding the views taken, the standard of care requires two to three views per study or body part; one is not enough. In addition, Dr.

Smith did not provide an assessment or plan for addressing the increased liver enzymes on the bloodwork from the visits on December 9 and December 14, 2021.

19. The medical record prepared by Dr. Smith was also deficient. COMAR 15.14.01.10A (Record Keeping) requires, for a companion animal, that a veterinarian prepare a legibly written record that accurately and thoroughly reflects the treatment provided, including the progress and disposition of the case. COMAR 15.14.01.10(7) requires that the record contain information documenting the animal's physical condition, as evidenced through a physical examination, no longer than 12 hours before administration of an anesthetic, injectable sedative, or injectable tranquilizing agent. COMAR 15.14.01.10A(10) specifies that the record must contain a surgery and anesthesia log if surgery is performed.

20. Dr. Smith did not satisfy the Board's record keeping standards because the record does not document the communication of abnormal findings with the client, contain an assessment or plan for abnormal results, or notate the type of sutures used in the surgery report or log. In addition, the medical record does not document a complete physical examination conducted within 12 hours of the laparotomy, as required by COMAR 15.14.01.10A(7), or contain an anesthesia log, as required by COMAR 15.14.01.10A(10).

21. Taking the facts and circumstances into consideration, including the nature of the violation(s), the veterinarian's disciplinary history, and 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 25th day of October, 2022, by the State Board of Veterinary Medical Examiners, ORDERED that:

- (a) For not satisfying COMAR 15.14.01.07 (Professional Judgment) in the care and treatment provided to Zelda, an 11-year-old female mixed dog owned by Tavia Mick, by performing radiographs with only one view, not labeling the radiographs taken,

not properly evaluating the radiographs, and not developing an assessment or plan for Zelda's increased liver enzymes, Dr. Smith is assessed a civil penalty of \$600;

- (b) For not satisfying COMAR 15.14.01.10A (Record Keeping) in the care and treatment provided to Zelda, an 11-year-old female mixed dog owned by Tavia Mick, by failing to document his communication of abnormal findings with the client, an assessment or plan, a complete physical examination performed before surgery, and the type of sutures used during surgery, and by not preparing an anesthesia log, Dr. Smith is assessed a civil penalty of \$1,000;
- (c) Dr. Smith shall pay the total civil penalty (\$1,600) 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 – 22-87" sent to the MDA at 50 Harry S. Truman Parkway, Annapolis, MD 21401;
- (d) As an additional requirement of this Consent Agreement, Dr. Smith shall complete nine (9) hours of continuing education ("CE"). Six of the hours of CE shall consist of the Medical Record Keeping for Veterinarians course found at drip.vet or an equivalent course pre-approved by the Board. The remaining three (3) hours of CE shall be in performing and interpreting radiographs, with any CE proposed to be taken submitted to the Board before completion for the Board's approval. Requests for pre-approval shall be emailed to Nathaniel Boan, Executive Director, at Nathaniel.boan@maryland.gov. The request should include a link to the CE, detailed information about the course content or a syllabus;
- (e) The CE shall be completed, and verification of completion provided to the Board within sixty (60) days from the date of this Order, with verification sent by email to Nathaniel Boan, Executive Director, at nathaniel.boan@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

(f) This Consent Agreement is a public document.

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

25th day of October, 2022.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

Christine Calvert / NEB

Christine Calvert, DVM

Member

State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Kevin Smith, DVM, 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 eight (8) pages, including this Consent. 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: 10/20/22

Kevin B. Smith DVM
Kevin Smith, DVM