

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

IN THE MATTER OF:

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TROY FOLAND, DVM
LICENSE NO. 3162

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DOCKET NO. 24-41A

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order (“Consent Agreement”), dated this 10th day of September 2024, is between the State Board of Veterinary Medical Examiners (“SBVME” or “Board”) and Troy Foland, DVM (“Dr. Foland”), License No. 3162. This Consent Agreement resolves a case arising from a complaint filed with the SBVME on October 23, 2023, assigned Docket No. 24-41, alleging that Dr. Foland did not satisfy the Veterinary Practice Act, Md. Code Ann., Agric. §§ 2-301 – 2-316 (“the Veterinary Practice Act”) and related Code of Maryland Regulations ("COMAR") 15.14.01 – 15.14.17, as set forth herein.

On June 21, 2024, Dr. Foland, having been advised in writing regarding his due process rights and while represented by legal counsel, agreed to resolve this case under the terms and conditions reflected in this Consent Agreement. By signing this Consent Agreement, Dr. Foland agrees to waive his right to formal proceedings in this case, including the issuance of charges and a hearing. He 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 under 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, any history of prior violations, and 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

By entering and signing this Consent Agreement after having had the opportunity to seek the advice of legal counsel, Troy Foland, DVM, License Number 3162, 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. Foland did not satisfy COMAR 15.14.01.07A (Professional Judgment and Practice) as described below:

1. Dr. Foland has been a veterinarian licensed to practice in Maryland since 1986.
2. At the time of the events described herein, Dr. Foland worked as a veterinarian at North Branch Animal Hospital (“NBAH” or “Hospital”) (License No. 01-008), located at 13701 McMullen Highway SW, Cumberland, MD 21502.
3. Dr. Foland has no history of discipline with the Board.
4. This case involves care and treatment provided to Marin, a 14-month-old neutered male domestic shorthair cat owned by Nichole Whisner (“Ms. Whisner”) and her wife, Cyerra Berkenbaugh (“Ms. Berkenbaugh”) (collectively, “the owners”).
5. On Wednesday, October 18, 2023, Ms. Whisner and Ms. Berkenbaugh took Marin to NBAH because the cat had blood in his urine. Darin Matlick, DVM (“Dr. Matlick”) (License No. 5463) was Marin's attending veterinarian initially. Dr. Matlick examined Marin and performed a SediVue urinalysis and radiographs, which indicated that Marin had bladder stones. Dr. Matlick recommended a cystotomy as soon as possible.

6. Because Dr. Matlick was leaving for the day, he transferred Marin's care to Dr. Foland. Dr. Foland discussed the morbidity and risk of medical therapy only (conservative treatment) with the owners. Marin's owners consented to a cystotomy and stone removal.

7. Dr. Foland performed a cystotomy that day. A pre-operative examination and pre-operative bloodwork were performed before the cystotomy. According to Dr. Foland, during Marin's procedure, he removed "many stones" with a snook hook/forceps/bladder spoon; however, there was one suspected stone Dr. Foland could not remove despite multiple attempts by Dr. Foland. The presence of that stone was confirmed in post-operative radiographs.

8. Marin was discharged later that day with an Elizabethan Collar ("EC"), Clavamox, and gabapentin. Per Dr. Foland's written response, Marin's recovery post-surgery was uneventful, and Marin was comfortable and had good urine flow assured. Per Dr. Foland, in a post-operative phone conversation with the owners, he discussed Marin's recovery, aftercare, and the need to monitor the concretion/possible stone and be prepared to do another surgery. That same afternoon, Marin urinated to a palpable empty bladder, and Marin was discharged to the owners. Dr. Foland gave his personal phone number, with discharge instructions, with the plan being that if Marin presented with decreased urine production or palpable enlarged bladder, he would re-explore at no additional charge.

9. NBAH sent multiple intact stones that had been removed during the surgery to the University of Minnesota's Urolith Center for analysis. The results revealed that Marin's bladder stones were 100% cystine.

10. On Thursday, October 19, 2023, the owners returned with Marin to NBAH for a postoperative evaluation and re-check. At this time, Marin had blood around his rear end, was whining as if he was in pain, was straining when in the litter box, and was not eating. Dr. Foland was Marin's attending veterinarian for this visit. Dr. Foland noted that the owners were seeing blood on Marin's penis. Marin had pollakiuria (increased frequency of urination) and stranguria (slow, painful urination).

11. Dr. Foland examined Marin and noted red, urine-soaked hindquarters. He observed that the patient's penis appeared normal, and he did not seem to be in obvious pain. Dr. Foland noted that Marin could not groom himself while wearing his EC. Dr. Foland advised the owners to do warm, wet soaks and blot or pat Marin dry until the EC could be removed.

12. According to Dr. Foland, Marin exhibited a 3/10 pain response at the incision site and upon abdominal palpation. Dr. Foland's differentials were a ruptured bladder, urethral blockage, uroabdomen, peritonitis, or simple urethritis. Dr. Foland performed a FAST scan, which revealed no free fluid in Marin's abdomen, normal details, and a medium-small bladder.

13. Dr. Foland advised the owners to keep Marin as comfortable as possible. He did not recommend NSAIDs, at least not initially, due to Marin's high Creatinine/BUN levels. However, Dr. Foland noted that if Marin was not eating the following day, he would consider recommending steroids for inflammation, pain medication, and an appetite stimulant. Dr. Foland advised the owners that they could take off Marin's EC "to groom, eat, and love." Per Dr. Foland's written response, he also reminded the owners that they may need to "go back in if the concretion moved."

14. On Saturday, October 21, 2023, at approximately 11:46 a.m., the owners brought Marin back to NBAH because he was still not urinating. For this visit, Jeremy Shumaker, DVM ("Dr. Shumaker") (License No. 6836), NBAH's owner and responsible veterinarian, was Marin's attending veterinarian. NBAH's medical records reflect that Marin urinated on the day of the cystotomy but had not urinated since. Marin had been straining in his litter box, had head tremors, and was shaking.

15. Dr. Shumaker performed an examination and x-ray. He reviewed Marin's x-ray and noted that the imaging reflected litter around Marin's prepuce and a small bladder with no signs of leaking. Dr. Shumaker also saw possible mineral opacity between the pelvic outlet and the prepuce. He recommended anti-inflammatory treatment and pain medication and advised the owners to monitor Marin closely for urine production. The records reflect that the owners had prednisolone at home for another pet, so Dr. Shumaker advised the owners to give .08 ml PO once daily for five days. He advised continuing the Clavamox and

gabapentin as previously prescribed by Dr. Foland and also recommended repeating Marin's Bup SR 0.2 ml.

16. On Sunday, October 22, 2023, Ms. Berkenbaugh sent a text message to Dr. Foland informing him that Marin died overnight. She was upset that they had taken Marin back to NBAH twice after his surgery because he was unable to urinate, but nothing was done from her point of view to rectify the problem.

17. On Monday, October 23, 2023, Ms. Whisner submitted a complaint to the SBVME alleging, among other things, that Dr. Foland and NBAH staff provided substandard care to Marin.

18. The Board opened this case and investigated.

19. After its review, the Board identified deficiencies in the care Dr. Foland provided and the records he prepared.

20. 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."

21. Dr. Foland did not satisfy the applicable standards by not removing all the stones in the patient's bladder or, in the alternative, not recommending that the owners seek care elsewhere for a repeat surgery to remove the stone(s) Dr. Foland could not remove. It was not within the standard of care to simply wait and see after the cystotomy was performed, at least not without first strongly recommending a second surgery to ensure that the remaining stone did not result in a blockage.

22. Dr. Foland also placed a urinary catheter during the surgery, but it was not removed until shortly before the patient was discharged. Under the circumstances, it was not appropriate to leave the catheter for so long. Doing so increases the chances of a urinary tract infection ("UTI") and provides less opportunity to ensure that the patient was urinating on his own before being discharged.

Taking the facts and circumstances into consideration, including the nature of the violation(s); the veterinarian's lack of 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 ORDERED by the State Board of Veterinary Medical Examiners that:

- (a) For not satisfying COMAR 15.14.01.07A (Professional Judgment and Practice) in the care and treatment provided to Marin, a 14-month-old neutered male domestic shorthair cat owned by Nichole Whisner and Cyerra Berkenbaugh, by not removing all stones present in the patient's bladder during surgery and not recommending a second surgery immediately or a surgical referral to remove the stones that were visible in post-operative radiographs, and by not removing the patient's urinary catheter promptly, Dr. Foland is assessed a civil penalty of \$1000;
- (b) Dr. Foland shall pay the civil penalty (\$1000) 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 – 24-41A" sent to the MDA at 50 Harry S. Truman Parkway, Room 102, Annapolis, MD 21401 – Attn: Nathaniel Boan; and
- (c) This Consent Agreement is a public order.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this 10th day of September, 2024.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS



Christine Calvert, DVM
President
State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Troy Foland, 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 to issue and enforce this Consent Agreement. To resolve this matter, I agree to accept and submit to the foregoing Consent Agreement, consisting of seven (7) 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. I fully understand and comprehend this Consent Agreement's language, meaning, and terms.

Date:

09/10/2024

A handwritten signature in black ink, appearing to be 'Troy Foland', written over a horizontal line.

Troy Foland, DVM