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

IN THE MATTER OF:	*	
MICHAEL HERKO, D.V.M.	*	DOCKET NO. 04-010
LICENSE NO. 4212	*	

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CONSENT AGREEMENT

This Consent Agreement, dated this 14th day of October, 2005, is between the State Board of Veterinary Medical Examiners ("Board") and Michael Herko, D.V.M., License No. 4212. The Agreement concerns the charges that the Board filed against Dr. Herko, pertaining to his treatment of "Ticar," a five-year old male Cane Corso, owned by Beverly Fischer, M.D.

Under State law, the 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 the provisions of the Veterinary Practice Act and regulations adopted thereunder. 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 [the Veterinary Practice Act and] Board rules and regulations after receiving a license" (Md. Code Ann., Agric. Art., §2-310(8)); and in lieu of, or in addition to, suspending a veterinarian's license, the Board may impose a civil penalty of not more than $5,000 (Md. Code Ann., Agric. Art., §2-310.1).

In this matter, the Board's charges against Dr. Herko included the following:

1.) The care he provided Ticar fell below the minimal standard required of a veterinarian in this State, a violation of COMAR 15.14.01.07; and

2.) He failed to comply with the record-keeping requirements for companion animals provided under COMAR 15.14.01.10.

FINDINGS OF FACTS

Dr. Herko, by entering into and signing this document, acknowledges that the Board could produce evidence establishing the following Findings of Fact:

1.) At all times relevant to the charges, Dr. Herko was, and is, a veterinarian licensed to practice veterinary medicine in the State of Maryland, and worked as a veterinarian at the Falls Road Animal Hospital.

2.) On or about September 8, 2003, at approximately 9:30 a.m., Dr. Herko assumed the care of Ticar, a five-year old male Cane Corso owned by Beverly Fischer, M.D. On presentation, Ticar weighed one-hundred fifty-six pounds, and had a low rectal temperature, to wit: 97.8°F., an indicator that the dog may be poorly perfused.

3.) Dr. Fischer described Ticar as weak, lethargic, dehydrated, and anorexic. She also noted that Ticar's mucous membranes were extremely pale, another indicator that the dog may be poorly perfused.

4.) On physical examination of the dog, Dr. Herko likewise noted that Ticar's mucous membranes were pale. Dr. Herko also noted that Ticar was thin, slightly dehydrated (5%), and had a hot spot over the left tail base. In addition, Dr. Herko detected that Ticar had a slight gallop heart rhythm, but no murmur.

5.) Although Dr. Herko checked Ticar's respiratory rate, effort or lung auscultation, he failed to record his findings in the patient's record.

6.) Dr. Herko ordered thoracic and abdominal radiographs and, after viewing them, noted that they showed mild cardiomegaly. When requested to produce these radiographs, however, Dr. Herko could not.

7.) Dr. Herko ordered an electrocardiogram, including a continuous lead II EKG to verify the results shown on the computer EKG. After noting Ticar's heart rate to be 188 beats per minute ("bpm") at 11:33 a.m., Dr. Herko made the following notation in the patient's record: "tachycardiac?" (a dog -- particularly a giant breed canine like Ticar -- with a persistent heart rate greater than 160 bpm should be assessed to determine if the cause of the tachycardia is due to: (a) primary cardiac dysfunction, such as arrhythmia or cardiomyopathy; or (b) compromised perfusion, such as hypovolemic, septic, or cardiogenic shock).

8.) Dr. Herko ordered that Ticar's blood pressure be monitored, but his order could not

be carried out because the hospital's equipment was broken and, as a result, it was difficult to characterize the dog's perfusion (as noted above, at presentation, Ticar showed signs of being poorly perfused).

9.) Dr. Herko also ordered blood work, which testing became even more significant given the hospital's inability to monitor Ticar's blood pressure (*e.g.*, the testing would indicate whether or not the packed cell volume and electrolyte values were abnormal, the latter of which may contribute to arrhythmias). Dr. Herko, however, did not request that the testing be performed in-house. Instead, he sent the blood sample to an outside laboratory for testing, expecting the results no later than 6:00 p.m. Although the laboratory did not report the results by 6:00 p.m. (nor even by 8:00 p.m., the time that Dr. Herko reportedly left the facility), Dr. Herko failed to order new blood work for in-house testing.

10.) Although Ticar was hospitalized in the Intensive Care Unit ("ICU") and had an ICU treatment sheet (specifying that the animal's vital signs be monitored minimally four times daily, that being, 8:00 a.m., 2:00 p.m., 8:00 p.m., and 2:00 a.m.), Dr. Herko did not make any notations in the patient's record showing the dog's vital signs, such as his respiratory rate and body temperature, during the period he was being monitored. Without any record of Ticar's respiratory rate, it cannot be determined if pulse oximetry, arterial blood gas analysis, or oxygen supplementation was indicated.

11.) Similarly, although he had ordered a continuous lead II EKG for Ticar, Dr. Herko, with the exception of the 11:30 a.m. EKG report, did not make any notations in the patient's record showing the dog's EKG results (for this reason, it cannot be determined whether Ticar remained tachycardic with an arrhythmia, as the EKG report showed at 11:30 a.m.).

12.) Later that night, at approximately 9:54 p.m., Dr. Fischer was advised that Ticar had died of cardiac arrest. Following Ticar's death, Dr. Herko received the results of the blood test, which showed that the dog was anemic and hypoalbumenic.

CONCLUSIONS OF LAW

Based upon these Findings of Fact, the Board makes the following Conclusions of Law:

1.) In failing to record the results of his examination of Ticar on presentation (*e.g.*, Ticar's respiratory rate, pulse rate, capillary refill time, lung sounds), particularly in light of Ticar's complaints and physical condition on presentation (to wit: weak, lethargic, dehydrated, thin, pale mucous membranes, low rectal temperature, slight gallop heart rhythm), Dr. Herko failed to comply with the record-keeping requirements for veterinarians in this State, a violation of COMAR 15.14.01.10A(6) (a veterinarian shall record the animal's physical condition at the beginning of custody).

2.) In failing to record Ticar's vital signs after placing the dog in ICU, in light of the facts and circumstances of this case, Dr. Herko failed to comply with the record-keeping requirements for veterinarians in this State, a violation of COMAR 15.14.01.10A(8) (a veterinarian shall record the animal's progress).

3.) While Dr. Herko's initial diagnostic plan for Ticar was well within and even exceeded the standard of care expected of a veterinarian in this State, his monitoring of the dog's condition, as documented in the patient's record, fell below the expected level of care, a violation of COMAR 15.14.01.07.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, finding that Dr. Herko violated the Veterinary Practice Act, it is this 14th day of October, 2005, by the State Board of Veterinary Medical Examiners, **ORDERED**:

1.) That Dr. Herko is assessed an Eight Hundred Dollar ($800) civil penalty, and that Dr. Herko shall pay the civil penalty within thirty (30) days from the date of this Consent Agreement;

2.) That Dr. Herko's license to practice veterinary medicine in this State is suspended

for a period of one week, but that this suspension is stayed; and

3.) That Dr. Herko is placed on probation for a period of six months under the following terms and conditions:

a.) That he obey all laws and regulations governing the practice of veterinary medicine in this State; and

b.) That he pay the aforementioned civil penalty within thirty (30) days from the date of this Consent Agreement.

10/14/05
Date

Chris H. Runde, DVM
Chris H. Runde, D.V.M.
President
State Board of Veterinary
Medical Examiners

CONSENT

I, Michael Herko, D.V.M., acknowledge that I had an opportunity to consult with counsel before entering into and signing this document. By this Consent, I hereby acknowledge that the Board, by a preponderance of the evidence, could prove the Findings of Fact and Conclusions of Law contained herein. Accordingly, in order to resolve these matters, I agree to accept and submit to the foregoing Consent Agreement, consisting of 5 pages.

I acknowledge the validity of this Consent Agreement as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to

counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the laws of the State of Maryland. I also affirm that I am waiving my right to appeal from this Consent Agreement.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Agreement.

I sign this Consent Agreement without reservation as my voluntary act and deed after having an opportunity to consult with counsel, and I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Agreement.

10-10-05
Date

Michael Herko, D.V.M.
Respondent

NOTARY

STATE OF Maryland

~~CITY~~/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 10th day of October, 2005, before me, a Notary Public of the State and City/County aforesaid, personally appeared Michael Herko, 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.

Ethel Braverman
Notary Public

My Commission expires: 12/1/07