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

IN THE MATTER OF:	*	
NELSON K. BRICKER, D.V.M.	*	**DOCKET NO. 18-55**
LICENSE NO. 6912	*	

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 4th day of ~~February~~ March, 2020, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Nelson K. Bricker, D.V.M. ("Dr. Bricker"), License No. 6912. This Consent Agreement resolves the charge filed by the SBVME on or about October 3, 2019 in Docket No. 18-55 alleging that Dr. Bricker 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 as set forth herein.

By letter dated January 3, 2020, Dr. Bricker, through counsel, requested a hearing on the charge. Thereafter, Dr. Bricker, accompanied by counsel, appeared before a team of Board members for a Resolution Conference. Following the resolution conference, the parties agreed to a resolution that included Dr. Bricker's agreement to waive his right to a hearing in Docket No. 18-55 and to entry of this Consent Order under the terms and conditions set forth herein.

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

Nelson K. Bricker, D.V.M., License Number 6912, by entering into and signing this Consent Agreement, while generally and specifically denying liability, agrees to the provisions of this Consent Agreement, acknowledging that the SBVME has proffered sufficient evidence from which a reasonable trier of fact could potentially find and ultimately conclude, as a matter of law, that Dr. Bricker violated COMAR 15.14.01.07 (Professional Judgment and Practice), as follows:

1. At all times relevant to this charge, Dr. Bricker was a veterinarian licensed to practice in the State of Maryland, where he has been licensed since 2012. Dr. Bricker has no prior disciplinary history with the Board.

2. At times relevant to this charge, Dr. Bricker was an associate veterinarian at Rocky Gorge Animal Hospital ("Rocky Gorge" or "the Hospital"), located at 7515 Brooklyn Bridge Road, Laurel, MD 20707 (Hospital License No. 16-033).

3. On or about January 30, 2018, Anna Marie Sullivan ("Owner" or "Ms. Sullivan") brought her 13-year-old Golden Retriever, "Bubba," to Rocky Gorge for dyspnea (shortness of breath) and lethargy. Ms. Sullivan owned Bubba with her husband, Dennis Sullivan ("Mr. Sullivan"). Another veterinarian at Rocky Gorge was Bubba's attending veterinarian at this visit. After undergoing diagnostic testing and an overnight hospital stay, Bubba tentatively was diagnosed with laryngeal paralysis. Bubba responded well to treatment and was able to go home with his owners the next morning.

4. Two months later, on March 31, 2018, Bubba became dyspneic, collapsed, and returned to Rocky Gorge, where Dr. Bricker became Bubba's attending veterinarian. Dr. Bricker was working an overnight shift at the Hospital, which began at 7:00 p.m. and continued through 7:00 a.m. Bubba

received injectable sedatives to stabilize his condition. Dr. Bricker admitted Bubba for monitoring and repeated sedation and anti-inflammatories during the overnight shift, as well as diagnostic testing, including radiographs ordered by Dr. Bricker. These radiographs were taken at approximately 8:45 p.m. Although Dr. Bricker was on duty at the Hospital from 7 p.m. through 7 a.m., he did not review Bubba's radiographs during his shift. The next morning, April 1, 2018, after Dr. Bricker had left the Hospital, another veterinarian cleared Bubba for discharge and discussed surgical intervention to address Bubba's issues with the Owners. At no time during his hospitalization did Dr. Bricker or any other veterinarian at the Hospital inform Bubba's owners regarding the possible presence of any mass or pneumonia.

5. On the morning of April 2, 2018, Bubba was vomiting phlegm and struggling to breathe. Ms. Sullivan called Rocky Gorge to discuss surgical options for Bubba. A hospital receptionist advised Ms. Sullivan take Bubba to PET+ER for treatment and possible surgery because Rocky Gorge did not offer the surgery considered for Bubba. The Owner complied.

6. Diagnostic testing performed at PET+ER showed that Bubba had a right adrenal gland mass most consistent with neoplasia. New radiographs taken at PET+ER showed metastatic lesions and pneumonia in Bubba's lungs. When the PET+ER veterinarian discussed these findings with the Sullivans, they were shocked, because they believed, based on their communications with Rocky Gorge staff, that Bubba only needed a surgical correction for his laryngeal paralysis.

7. The Sullivans opted to leave Bubba at PET+ER for overnight care while they weighed their options for his continued care and treatment. On April 3, 2018, the Sullivans made the difficult decision to euthanize Bubba.

8. The Sullivans later filed a complaint with the Board arising from the care Bubba received at Rocky Gorge. The Board conducted an investigation into the complaint. As part of the investigation, Board Investigator, Ellen James, interviewed Dr. Bricker. During his interview, Dr. Bricker admitted that he did not review Bubba's radiographs while Bubba was hospitalized at Rocky Gorge from March 31, 2018 through April 1, 2018. After he learned that Bubba had been euthanized, Dr. Bricker reviewed the radiographs he ordered on March 31, 2018 and was able to see the metastatic lesions.

9. COMAR 15.14.01.07A requires that a veterinarian's care and treatment of a patient conform to the reasonable standards of care and treatment which are customary among veterinarians in this State. By failing to review the radiographs that he ordered on March 31, 2018 during his overnight shift, Dr. Bricker did not satisfy the applicable standard of care. A reasonable veterinarian acting in Dr. Bricker's place would have reviewed Bubba's radiographs and communicated with Bubba's owners about any findings, including the metastatic lesions Dr. Bricker has confirmed were present on the radiographs.

Taking the facts and circumstances into consideration, including the nature of the violation, the veterinarian's lack of prior disciplinary history, his acceptance of responsibility and remorse for the outcome, his explanation of the events at issue and measures being taken to prevent a similar occurrence in the future, as well as his good faith efforts to resolve 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 4th day of March 2020, by the State Board of Veterinary Medical Examiners, ORDERED that

(a) For violation of COMAR 15.14.01.07 (Professional Judgment and Practice), Dr. Bricker shall pay a civil penalty of $1000.00;

(b) Dr. Bricker shall pay the civil penalty within thirty (30) days of the date of this Consent Agreement by check payable to the Maryland Department of Agriculture with the notation "SBVME – 18-55";

(c) Dr. Bricker shall serve a period of probation of six (6) months from the date of this Consent Agreement. 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 period of

probation. Violation of probation may result in the imposition of additional sanctions, including, but not limited to, a one-week suspension, following notice and an opportunity to be heard.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this 4th day of ~~February~~ March, 2020.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

Heather Hendler, V.M.D.
Vice-President
State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Nelson K. Bricker, 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. In order to resolve this matter, I agree to accept and submit to the foregoing Consent Agreement, consisting of ___ 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.

19 Feb 2020
Date

Nelson K. Bricker, D.V.M.

NOTARY

STATE OF Maryland
CITY/COUTY OF Howard

I HEREBY CERTIFY that on this 19 of February, 2020 before me, a Notary Public of the City/County aforesaid, personally appeared Nelson K. Bricker, D.V.M, and made oath in due form of law that the foregoing Consent Agreement was his/her voluntary act and deed.

AS WITNESS my hand and notarial seal.

Notary Public
My commission expires:

JULYSSA TORRES
NOTARY PUBLIC
HOWARD COUNTY MARYLAND
MY COMMISSION EXPIRES
OCTOBER 29, 2021