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

IN THE MATTER OF:	*	
FRANKLIN WAGNER, D.V.M.	*	**DOCKET NO. 19-80**
LICENSE NO. 1424	*	

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 9th day of April February 2020, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Franklin Wagner, D.V.M. ("Dr. Wagner"), License No. 1424. This Consent Agreement resolves the charges filed by the SBVME on or about December 16, 2019 in Docket No. 19-80, alleging that Dr. Wagner 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 set forth herein.

By letter January 22, 2020, Dr. Wagner, notified the Board of his decision to waive his right to a hearing on the charges in Docket No. 19-80 and further agreed to the terms and conditions of this Consent Agreement, including payment of the civil penalties.

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

Franklin Wagner, D.V.M., License Number 1424, by entering into and signing this Consent Agreement, having had the opportunity to seek 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. Wagner violated COMAR 15.14.01.04A & B, COMAR 15.14.01.12-3B; COMAR 15.14.05.02A, and COMAR 15.14.01.10A as set forth herein:

1. At all times relevant to these charges, Dr. Wagner was a veterinarian licensed to practice in Maryland where he has been licensed since 1968.

2. Dr. Wagner has a prior disciplinary history with the Board which includes two prior actions. In 2011, Dr. Wagner entered into a Consent Agreement and Order with the Board in Docket No. 11-09, in which the Board found that Dr. Wagner violated COMAR 15.14.01.07 (Professional Judgment and Practice), COMAR 15.14.01.10 (Record Keeping), and COMAR 15.14.01.12-2F (Dispensing of Federal Legend Drugs or Veterinary Prescription Drugs) in the course of his treatment of a dog. As part of that Consent Agreement, Dr. Wagner was placed on probation for six months, agreed to complete six hours of continuing education and paid a civil penalty of $1,300.00. Dr. Wagner complied with the terms and conditions of this Consent Agreement. In 2012, Dr. Wagner was found to have violated COMAR 15.14.01.12 by failing to store controlled dangerous substances under lock and key. Dr. Wagner was assessed a civil penalty of $500, which was paid.

3. At the time of the incidents described in these charges, Dr. Wagner was the owner and responsible veterinarian of a veterinary hospital known as Antietam Valley Animal Hospital ("Hospital"), located at 15610 National Pike, Hagerstown, MD 21740.

4. On May 14, 2019, Board Inspector Ellen James ("Ms. James") conducted a routine inspection of the Hospital during which she found eighty-three (83) expired medications in the Hospital's working stock.

See Hospital Inspection Report, attached as Exhibit A. The expired medications included twenty unopened10 ml bottles of rabies vaccine (200 doses) that expired in October or November 2018; two opened 10 ml bottles of rabies vaccine that expired in October or November 2018; twenty-four doses canine distemper combo vaccines that expired in February 2019; and twelve doses of feline distemper vaccines that expired September 11, 2017. Ms. James issued a COMAR Violation sheet, which was signed by Dr. Wagner.

5. COMAR 15.14.01.12-3A prohibits veterinarians from administering expired medications to an animal and COMAR 15.14.01.12-3C requires that expired medications must be packaged and kept separate and apart from unexpired medications until disposal of such medications.

6. Following Ms. James' inspection, Board Investigator Susan K. Husk ("Ms. Husk") and Ms. James reviewed medical records produced by the Hospital in response to a Board request. These records covered the period from October 2018 through May of 2019.

7. Based on this investigation, the Board determined that Dr. Wagner administered the following expired vaccines in the time periods specified:

- Seven (7) one-year rabies vaccines between 10/22/2018 and 12/28/2018;
- Thirty (30) three-year rabies vaccines between 10/17/2018 and 12/27/2018;
- Thirty (30) one-year rabies vaccines between 1/3/2019 and 4/4/2019; and
- Ninety-one (91) three-year rabies vaccines between 1/8/2019 and 5/7/2019.

8. Dr. Wagner also administered at least one canine distemper combo vaccine (without Lepto) and thirteen (13) feline viral rhinotracheitis, calicivirus, and panleukopenia ("FVRCP") vaccines in 2019.

9. COMAR 15.14.01.07A (Professional Judgment and Practice) requires that a veterinarian, when caring for and treating a patient, conform to those minimum standards of care and treatment which are customary among veterinarians in this State. In addition, COMAR 15.14.01.12-3A prohibits a veterinarian from administering expired medications to any animal. By vaccinating animal patients with expired medications, Dr. Wagner failed to satisfy the standard of care, in violation of COMAR 15.14.01.07 and left his patients at risk of not being protected against the diseases for which they were vaccinated, including rabies, a fatal disease with significant public health implications.

10. In addition to the expired medications identified by Ms. James during the May 7, 2019 inspection, Ms. James also noted that labels containing expiration dates had been cut off of several medications in the Hospital, including 7.5 ml. bottles of Tresaderm (10 bottles) that, according to the box they were in, expired in June 2018 and 15 ml. bottles of Tresaderm (6 bottles) that, according to the box they were in, expired in October 2018.

11. COMAR 15.14.01.04A & B (Professional Conduct) requires a veterinarian to act in relation to the public, colleagues, their patients, and the allied professions so as to merit their full confidence and respect. COMAR 15.14.01.04B provides that a veterinarian may not act in an unprofessional or immoral manner. Likewise, COMAR 15.14.01.12-3B prohibits a veterinarian from removing the expiration date from a medication label. By removing the expiration date labels from medications in his veterinary hospital, Dr. Wagner engaged in unprofessional conduct in violation of COMAR 15.14.01.04.

12. COMAR 15.14.05.02A also prohibits a veterinarian from issuing a health certificate or rabies certificate for a companion animal that is blank or incomplete. This regulation further requires that the veterinarian sign a certificate either in writing or electronically. A complete rabies certificate should be signed by the veterinarian at the time it is issued and should contain the information required under Maryland law. The required information includes: the owner(s)' first and last name, the owner's address including number, street, city, state, and zip code, as well as the species, breed, age, sex and markings of the animal, including microchip number, if applicable. In addition, the certificate must include the product name, the manufacturer, whether it is one, three, or four year USDA licensed vaccine, whether the animal is receiving an initial or booster dose, and the vaccine serial (lot) number. *See* COMAR 15.14.05.02B.

13. None of the rabies certificates issued by Dr. Wagner that were reviewed by Board inspectors comply with these standard, in that Dr. Wagner did not sign any of them. In addition, many of the certificates were not completed fully. The information omitted in certain certificates includes the full addresses of the owners and the lot numbers of the vaccines. The omission of lot numbers from the rabies certificates is particularly problematic because the lot numbers can be used by the Board, Department of

Health, or pet owner to verify expiration dates with the vaccine manufactures. By failing to include this information on some rabies certificates, Dr. Wagner has made it impossible to verify expiration dates.

14. A veterinarian treating a companion animal must also prepare a record that accurately and thoroughly reflects the treatment provided and reflects the progress and disposition of the case. *See* COMAR 15.14.01.10A. Dr. Wagner's record of vaccines administered to his patients do not contain vaccine label stickers or other information showing the lot number and expiration date of the vaccine administered, in violation of COMAR 15.14.01.10A. Again, the omission of this information from the medical record prevents an interested party from verifying that the vaccines administered had not expired. After the violations set forth herein were brought to the attention of the Board, but before any formal charges were filed, Dr. Wagner agreed to notify all clients whose animals received expired rabies vaccines that expired vaccines had been administered, and to offer to revaccinate each animal with unexpired vaccines. This notice was given in writing by Dr. Wagner by way of a postcard mailed in July of 2019. Since the postcards were mailed, Dr. Wagner has administered vaccines to the target patients free of charge.

Taking the facts and circumstances into consideration, including the serious nature of the violations, the veterinarian's disciplinary history at the time of the complaint, his acceptance of responsibility and remorse for the outcome, his agreement to take prompt action to administer unexpired rabies vaccines to those patients who received expired vaccinations as set forth herein, and 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 9th day of April, 2020, by the State Board of Veterinary Medical Examiners, ORDERED that:

(a) For violating COMAR 15.14.01.04 (Professional Conduct), by purposefully removing the expiration dates from sixteen drugs that were identified during an inspection of Dr. Wagner's veterinary hospital, namely Antietam Valley Veterinary Hospital, located at 15610 National Pike, Hagerstown, MD 21740, on May 7, 2019, Dr. Wagner shall pay a civil penalty of $3,000;

(b) For violating COMAR 15.14.01.07 (Professional Judgment and Practice), by administering expired vaccines to animals at a veterinary hospital he owned and operated, namely Antietam Valley Hospital, located at 15610 National Pike, Hagerstown, MD 21740, between October 1, 2018 and May 14, 2019, Dr. Wagner shall pay a civil penalty of $3,000;

(c) For violating COMAR 15.14.01.12-C (Expired Medications) by failing to keep expired medications separate and apart from the working stock of medications at a veterinary hospital he owned and operated, namely, Antietam Valley Animal Hospital, located at 15610 National Pike, Hagerstown, MD 21740, Dr. Wagner shall pay a civil penalty of $1,000, stayed;

(d) For violating COMAR 15.14.05.02 (Health Certificate and Rabies Certificate for Companion Animals – Information on Certificate), by issuing incomplete rabies certificates following administration of rabies vaccines, including certificates that did not contain Dr. Wagner's signature, the full addresses of the animal's owner(s), and/or the lot numbers of the vaccines administered, Dr. Wagner shall pay a civil penalty of $3,000, with $1000.00 stayed;

(e) For violating COMAR 15.14.01.10A (Record Keeping), by failing to prepare medical records which reflect necessary information related to the progress and disposition of the case, including the vaccine label stickers or other information showing the lot number and expiration date of each vaccine administered to his companion animal patients, Dr. Wagner shall pay a civil penalty of $3,000;

(f) The total, non-stayed portion of the civil penalty ($11,000) shall be paid by Dr. Wagner within three months, the date of this Consent Order, by check payable to the Maryland Department of Agriculture with the notation "SBVME – 19-80";

(g) Dr. Wagner's license shall be suspended for two weeks (2) weeks, which do not have to be served consecutively. Dr. Wagner shall notify the Board of the dates for each week he plans to serve the suspension, and obtain the Board's approval in advance. The Board acknowledges that, with Board approval, Dr. Wagner served his suspension from February 4, 2020 through February 18, 2020;

(h) Dr. Wagner shall serve a period of probation of eighteen (18) months from the date of this Consent Agreement and Order. 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. The veterinarian shall promptly respond to document requests from the Board for copies of medical records for Board review to ensure compliance with Board regulations, and submit to inspections or other record requests to review compliance. 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 will result in any stay of sanctions being lifted immediately, and the Board ordering the veterinarian to comply with the sanctions, and may also result in the imposition of additional sanctions, following notice and an opportunity to be heard;

(i) As an additional condition of probation, Dr. Wagner shall complete continuing education ("CE"), consisting of the entire Veterinary Law and Ethics online course offered by Dr. James Wilson and Dr. Lance Roasa via www.drip.vet. The CE shall be completed and verification of completion provided to the Board within thirty-six (36) months from the date of this Order. To verify completion of all required CE, Dr. Wagner's CE records may be subject to audit by the Board at any time. Proof from the CE provider shall include Dr. Wagner's name, the number of hours of CE completed, the topics covered, and the dates the CE were given. This CE will not be counted

towards the 18 credit hours of CE required annually for re-registration of the veterinary license and the Board may audit CE records for relevant years to verify full completion of the CE required annually for all veterinary practitioners as well as the CE provided for in this Consent Order. The Board acknowledges that Dr. Wagner completed this CE on January 22, 2020 and supplied a Certificate of Completion to the Board.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this 9th day of ~~February~~ April, 2020.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

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

CONSENT

I, Franklin Wagner, 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.

2/24/20
Date

Franklin A. Wagner DVM
Franklin Wagner, D.V.M.

NOTARY

STATE OF Maryland
CITY/COUTY OF Washington

I HEREBY CERTIFY that on this 24th of February 2020 before me, a Notary Public of the City/County aforesaid, personally appeared Franklin Wagner, 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.

Lori Ashby
Notary Public
My commission expires: May 3, 2020

LORI ASHBY
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
My Commission Expires May 3, 2020

RECEIVED
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BY: TX