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

IN THE MATTER OF:	*	
KENNETH OSTROFF, D.V.M.	*	DOCKET NO. 10-47
LICENSE NO. 2584	*	

* * * * * * * * * * * * * *

CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order (Consent Agreement), dated this 26th day of April, 2011, is between the Maryland State Board of Veterinary Medical Examiners (Board) and Kenneth Ostroff, D.V.M. (Dr. Ostroff), License No.2584. This Consent Agreement resolves the charges filed by the Board on September 24, 2010, alleging that Dr. Ostroff violated a regulation under the Maryland Veterinary Practice Act , specifically, Code of Maryland Regulations (COMAR) 15.14.01.07, in August of 2009, by failing to remove a surgical instrument, a hemostat, after surgery on Jessica Thorpe's 11-year-old female Labrador Retriever, "Tyler." On September 30, 2010, Dr. Ostroff requested a hearing before the Board to dispute the charge. Thereafter, the parties entered into discussions and were able to reach a resolution. By entering into this Consent Agreement, Dr. Ostroff waives the right to a hearing and appeal on the charging document.

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 provisions of the Maryland Veterinary Practice Act, Agriculture Article §§ 2-301 et seq., Annotated Code of Maryland and related regulations. As part of its authority, 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 Board rules and regulations after receiving a license." Md. Code Ann., Agric. Art., § 2-310(8). In addition, the Board may 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 a veterinarian's license. Md. Code Ann., Agric. Art., § 2-310.1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board's investigation revealed that on August 19, 2009, Dr. Ostroff performed surgery on Jessica Thorpe's Labrador Retriever, "Tyler," to remove an 8-pound malignant tumor in the liver. A veterinary technician who assisted in the surgery later admitted her failure to account for a surgical pack. On September 2, 2009, Dr. Ostroff surgically removed the hemostat from "Tyler," without cost to Ms. Thorpe for the corrective surgery and aftercare. Dr. Ostroff proactively instituted a written surgical counting policy (Exhibit A, Goshen Animal Clinic Surgical Counting Policy, attached), and participated in relevant continuing education in animal surgery.

Dr. Ostroff, by entering into and signing this Consent Agreement, while generally and specifically denying liability in this case, agrees to this Consent Agreement, acknowledging that the Board has sufficient evidence to find, as fact, and conclude as a matter of law that he did not violate COMAR 15.14.01.07 Professional Judgment and Practice, but did violate COMAR 15.14.01.10 Record Keeping, by failing to account for a surgical instrument post-operatively for Jessica Thorpe's 11-year-old female Labrador Retriever, "Tyler," on August 19, 2009. Taking into account all of the facts and circumstances, the Board concluded that the following sanctions were reasonable and appropriate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 26th JLH day of April, 2011, by the Maryland State Board of Veterinary Medical Examiners, **ORDERED** that:

a.) Dr. Ostroff shall serve a period of probation of six months from the date of this Order. If Dr. Ostroff successfully completes all the conditions of probation within three months, he may file a written request with the Board for early termination of the period of probation. The Board will consider the request in good faith, and may use its discretion in responding to the request. While on probation, the veterinarian will 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 further disciplinary action and sanctions.

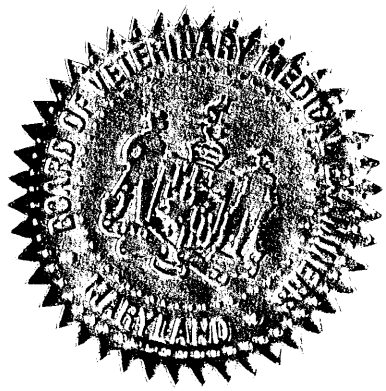
b.) As a condition of probation, Dr. Ostroff shall make a $750.00 charitable donation to an SPCA in Maryland (payment of $750.00 to be made with documentation of the donation amount from the SPCA to the Maryland State Board of Veterinary Medical Examiners within three months of the date of this Order);

c.) As a condition of probation, Dr. Ostroff shall comply with Exhibit A during all surgeries for the period of probation in this Consent Agreement.

d.) As a condition of probation, Dr. Ostroff shall complete 6.0 credit hours of continuing education (CE) in small animal surgery, as preapproved by the Board, within six months of the date of this Order. To fulfill this requirement, the veterinarian shall obtain approval for the selected CE from the Board before registering and attending in person the CE course. After completion of the 6.0 credit hours, the veterinarian shall forward to the Board proof of completion of the CE credit hours required under this Order. The Board specifically accepts Dr. Ostroff's participation in 6 credit hours of CE in animal surgery on December 16, 2010, submitted on March 13, 2011; however, Dr. Ostroff shall forward to the Board proof of completion within 60 days of this Order to obtain satisfaction in full of this condition of probation.

John L. Heizer, DVM

John L. Heizer, D.V.M.
Vice President
Maryland State Board of Veterinary Medical Examiners

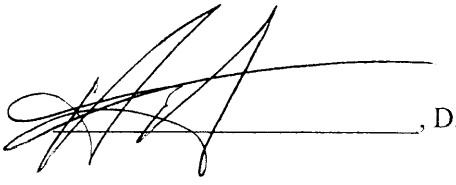


CONSENT

I, Kenneth Ostroff, acknowledge that I have had an opportunity to consult with legal counsel before entering into and signing this document. By this Consent, I hereby acknowledge the legal authority and the jurisdiction of the Board over this matter and 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 four pages, including this page.

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

4/11/11
Date

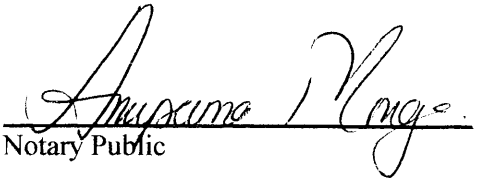

, D.V.M.

NOTARY

STATE OF Maryland.
CITY/COUNTY OF Montgomery.

I HEREBY CERTIFY that on this 11th day of April, 2011, before me, a Notary Public of the State and City/County aforesaid, personally appeared Kenneth H Ostroff, D.V.M., and made oath in due form of law that the foregoing Consent Agreement and Order was his voluntary act and deed.

AS WITNESS my hand and notarial seal.


Notary Public

My Commission expires: 6/18/2014.

GOSHEN ANIMAL CLINIC
Kenneth Ostroff, DVM
8357 Snouffer School Road
Gaithersburg, MD 20879
301-977-5586

Surgical Counting Policy

Section A: Purpose

The purpose of this policy is to establish guidelines for the counting of the contents of surgical packs and surgical equipment before surgery, and following surgery.

Section B: Policy and Procedure

The contents of any surgical packs and/or surgical equipment are to be counted as follows:

1. By: The Surgery Technician
   When: When packing the contents of each general surgery pack.

   * Each pack of individually wrapped sponges will have the exact number of sponges and instruments recorded on the package.

2. By: The Surgeon
   When: Opening the general surgery pack.

   * This count is to be done audibly.
   * This number is to be recorded by the surgery technician on the anesthetic record as "post-surgery count."

3. By: The Surgeon
   When: Upon closure of the surgical site.

   * This count is to be done audibly and verified by the surgery technician against the numbers recorded in the anesthetic record as "pre-surgery count."

4. By: The Surgery Technician
   When: Upon completion of the surgical procedure.

Exhibit A