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

IN THE MATTER OF:	*	
BENJAMIN HARMAN, D.V.M.	*	DOCKET NO. 06-034
LICENSE NO. 5575	*	

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CONSENT AGREEMENT & ORDER

This Consent Agreement and Order ("Agreement & Order") dated this 20th day of November CHR ~~October~~, 2007, is between the Maryland State Board of Veterinary Medical Examiners ("Board") and Benjamin Harman, D.V.M. ("Dr. Harman"), License No. 5575. This Agreement concerns the resolution of a complaint filed with the Board in April 2006 by Ms. Brenda Dean, the owner of an eleven month-old female mixed canine who was diagnosed in February 2006 by another veterinarian as having a gauze square in her abdomen after an ovario-hysterectomy performed by Dr. Harman in September 2004. As a result of Ms. Dean's complaint, the Board charged Dr. Harman on May 8, 2007 with four charges:

(1) Dr. Harman failed to conform to the minimal standards of care expected of a veterinarian in this State as set forth in COMAR 15.14.01.07;

(2) Dr. Harman failed to record pertinent information concerning the patient's physical condition as set forth in COMAR 15.14.01.10A(6);

(3) Dr. Harman failed to assess the patient's physical condition after anesthetizing the patient, or, alternatively, the examination and assessment was properly performed, but

Dr. Harman did not document the findings in the patient's records, as set forth in COMAR 15.14.01.10A(6); and

(4) Dr. Harman failed to keep an anesthetic log after anesthetizing the patient to perform a surgical procedure as set forth in COMAR 15.14.01.10A(9).

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 Veterinary Practice Act, Agriculture Article §§ 2-301 *et seq.*, Annotated Code of Maryland and regulations adopted thereunder. 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 also impose a civil penalty of not more than $5,000 in lieu of or in addition to the suspending a veterinarian's license. Md. Code Ann., Agric. Art., § 2-310.1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A Pre-Hearing Case Resolution Conference was held in this matter on October 9, 2007. At the conference, the Board recognized that Dr. Harman, upon learning that a gauze square had been found in his former patient subsequent to the patient's ovario-hysterectomy, took proactive steps to provide restitution to the patient's owner, Brenda Dean. Dr. Harman also provided financial assistance to cover the patient's post-operative medical expenses. The Board found that Dr. Harman was candid and forthcoming. Dr. Harman acknowledged that the Board had sufficient evidence to find, as fact, the facts

asserted in the Board's charging document. The Board also acknowledged that the occurrence of a retained gauze square was an honest mistake, but one that could be prevented.

Dr. Harman was found to have adopted written protocols, prior to his Pre-Hearing Case Resolution Conference, and he was found to have taken very reasonable steps to prevent similar outcomes from occurring. Those steps included the creation and implementation of practice-wide written policies and procedures for surgical sponge counting and for surgical and anesthetic recording. The written policies are attached as Exhibit 1 CHE 11/20/07 2 to this Consent Order and Agreement. Dr. Harman was also found to be an active member of continuing medical and veterinary education in the State of Maryland. Taking all of the facts and circumstances of the matter into account, including a good patient outcome and recovery, the Board concluded that the most reasonable and appropriate sanction in this matter, in conjunction with Dr. Harman's proactive conduct and policy implementation, included only a period of probation and a civil penalty.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of ~~October~~ November CHE 2007, by the Maryland State Board of Veterinary Medical Examiners, **ORDERED**:

1.) That Dr. Harman is assessed a civil penalty in the amount of One Thousand One Hundred Dollars; and

2.) That Dr. Harman is placed on probation for a period of six months from the date of this Agreement & Order requiring him to obey all laws and regulations governing the

practice of veterinary medicine in this State. Violation of probation could result in the Board's sanctioning Dr. Harman with additional civil fines and/or suspension or revocation of his license.

Chris H. Runde, DVM

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

CONSENT

I, Benjamin Harman, 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 and Order. In order to resolve this matter, I agree to accept and submit to the foregoing Consent Agreement and Order, consisting of three pages.

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

11-2-07
Date

Benjamin Harman, D.V.M.

NOTARY

STATE OF Maryland
CITY/COUNTY OF Allegany

I HEREBY CERTIFY that on this 2 day of Nov, 2007, before me, a Notary Public of the State and City/County aforesaid, personally appeared Richard Springer, 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:
5-1-08

HILLSIDE ANIMAL HOSPITAL
Dr S Harman* Dr B Harman* Dr T Vogtman
17100 National Highway, P.O. Box 31
Eckhart, MD 21528
301-689-2782

Sponge Counting Policy

Policy effective 01-01-2007

Policy reviewed and accepted by
Hillside Animal Hospital 10-03-2007

Section A: Purpose

The purpose of this policy is to establish guidelines for counting surgical sponges.

Section B: Policy and Procedure

Sponge counts are to be completed as follows:

- By the surgery technician when packing surgical sponges with each general surgery pack or as individually wrapped sponges.
  * Each general surgery pack will contain 10 (ten) 4X8 surgical sponges.
  * Each pack of individually wrapped sponges will have the exact number of sponges recorded on the package.
- By the surgeon upon opening the general surgery pack or the individually wrapped sponges.
  * This count is to be done audibly.
  * This number is to be recorded by the surgery technician on the anesthetic record as "pre-surgery count".
- By the surgeon upon closure of the surgical site.
  * This count is to be done audibly.
- By the surgery technician upon completion of the surgical procedure.
  * This number is to be recorded by the surgery technician on the anesthetic record as "post-surgery count".