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

IN THE MATTER OF:	*	
MICHAEL J. HERKO, D.V.M.	*	DOCKET NO. 11-67
LICENSE NO. 4212	*	

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CONSENT AGREEMENT AND ORDER

30th JLH

This Consent Agreement and Order (Consent Agreement), dated this 13th day of Nov., 2012, is between the Maryland State Board of Veterinary Medical Examiners (Board) and Michael J. Herko, D.V.M. (Dr. Herko), License No. 4212. This Consent Agreement resolves the charges filed by the Board on November 21, 2011 in Docket No. 11-67, alleging that Dr. Herko violated a certain Code of Maryland Regulation (COMAR), pertaining to the care and treatment on or about April 21, 2011 of a two-year-old male Pug, "Otis," who was presented by Allan Griffin for neutering. On December 2, 2011, Dr. Herko requested a hearing on the Board's charges. Subsequently, the parties have agreed to resolve this matter without a hearing. By entering into this Consent Agreement, Dr. Herko waives the right to a hearing and appeal on the charges in Docket No. 11-67.

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 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, 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

Dr. Herko, by entering into and signing this Consent Agreement, while generally and specifically denying liability in this case, agrees to the provisions of this Consent Agreement, acknowledging that the Board has sufficient evidence to find, as fact, and conclude as a matter of law that he did violate a certain regulation adopted under the Veterinary Practice Act, specifically, COMAR 15.14.01.10, pertaining to record-keeping. On or about April 21, 2011, Dr. Herko failed to adequately document the monitoring of a brachycephalic dog, Allan Griffin's two-year-old male Pug, "Otis," during recovery following use of anesthesia for neutering.

Taking all the facts and circumstances into consideration, including the severity of the violation, Dr. Herko's minor 2009 disciplinary history for record-keeping, Dr. Herko's good faith effort to resolve this matter, and Dr. Herko's recent continuing education in anesthesia monitoring, the Board concluded that the most reasonable and appropriate resolution in these matters included the following sanctions.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 30th day of Nov., 2012, by the Maryland State Board of Veterinary Medical Examiners, JLH ORDERED that:

a. For the violation of COMAR 15.14.01.10 Record Keeping, Dr. Herko agrees to make a charitable donation of $500 to the Maryland SPCA in lieu of payment of a civil penalty of $500; payment to be made within 30 days of the date of this Order with documentation of the payment provided to the Board by the Maryland SPCA within 30 days of the payment.

b. Dr. Herko shall serve a period of probation of six months beginning the date this Order is fully executed. 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.

John L. Heizer, DVM

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

CONSENT

I, Michael Herko, 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.

11/13/12
Date

Michael Herko, D.V.M.
Michael J. Herko, D.V.M.

NOTARY

STATE OF Maryland

CITY/COUNTY OF

I HEREBY CERTIFY that on this 13 day of November, 2012, before me, a Notary Public of the State and City/County aforesaid, personally appeared Michael J. Herko, 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.

Carol H. Easton
Notary Public

My Commission expires:

2/5/2016