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

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| IN THE MATTER OF: | * | |
| ARTHUR MACLARTY, D.V.M.<br>License No. 5404 | * | DOCKET NO. 04-057 |
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## CONSENT AGREEMENT

This Consent Agreement, dated this 25th day of August, 2005, is between the State Board of Veterinary Medical Examiners ("Board") and Arthur MacLarty, D.V.M., License No. 5404. The Agreement concerns the charges that the Board filed against Dr. MacLarty, pertaining to his treatment of "Tootsie," a fifteen-year old female Calico cat, owned by Mrs. Jolynn Minnema.

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 the provisions of the Veterinary Practice Act and regulations adopted thereunder. 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 [the Veterinary Practice Act and] Board rules and regulations after receiving a license" (Md. Code Ann., Agric. Art., §2-310(8)); and in lieu of, or in addition to, suspending a veterinarian's license, the Board may impose a civil penalty of not more than $5,000 (Md. Code Ann., Agric. Art., §2-310.1).

More specifically, in this matter, the Board has charged Dr. MacLarty with the following:

1.) That the care he provided a patient fell below the minimal standard required of a veterinarian in this State, a violation of COMAR 15.14.01.07; and

2.) That he failed to comply with the record-keeping requirements for companion animals provided under COMAR 15.14.01.10.

## FINDINGS OF FACT

Dr. MacLarty, by entering into and signing this document, acknowledges that the Board could produce evidence establishing the following Findings of Fact:

1. At all times relevant to the charges, Dr. MacLarty was, and is, licensed to practice veterinary medicine in the State of Maryland; and practiced veterinary medicine at Banfield, The Pet Hospital, located at 5401 Urbana Pike, Frederick, Maryland 21704.

2. On or about October 21, 2004, Jolynn Minnema presented "Tootsie," a fifteen-year old female Calico cat, to Dr. MacLarty for veterinary care (to wit: Tootsie's chief complaint on presentation was that she was "anorexic" and has "continued to loose weight" since undergoing a thyroidectomy).

3. Dr. MacLarty examined Tootsie and, among his observations, noted the following: The cat was thin (weighing 5.8 lbs.), 10% dehydrated, had a normal temperature (to wit: 101.1°F.), a heart rate of 160, and a respiratory rate of 60. After completing his examination, Dr. MacLarty advised placing a feeding tube in the cat to help her eat.

4. That evening, at approximately 5:00 p.m., Dr. MacLarty placed an esophagostomy tube in Tootsie (to wit: an 8 French tube). Current veterinary literature, however, indicates that a larger tube ought to have been used in this case because larger tubes allow easier delivery of blended pet foods.

5. To perform this procedure, Dr. MacLarty placed Tootsie on fluids and anesthetized her, recording the following information concerning the cat's anesthetic induction in the patient's record: "iv catheter placed," "propofol to induction." Dr. MacLarty, however, failed to note in the patient's record: a.) the amount of propofol (mg or ml) that he administered to Tootsie; and b.) the rate, type, and total amount of fluids administered to the cat intravenously.

6. To place the tube, Dr. MacLarty first inserted a large curved hemostat into the esophagus. He then attempted to insert and advance a pre-measured and trimmed 8

French tube -- pre-measured to lie at the level of the 8th rib so that it would not pass the esophageal sphincter and predispose Tootsie to gastric reflux and esophagitis. Finding the tube too flexible when he attempted to advance it (*i.e.*, it would kink), Dr. MacLarty inserted a small wire stylet, trimmed shorter than the tube, to provide the needed rigidity. Using the stylet, Dr. MacLarty advanced the tube into the esophagus.

9. Dr. MacLarty's use of a stylet, especially sized so as not to protrude from the tube's tip, was appropriate in this instance, given the fact that the tube had begun to kink. Its necessity, however, may have been averted if Dr. MacLarty: a.) had not attempted to insert the tube directly down the cat's esophagus, and b.) had used a larger tube -- which is more rigid.

10. Dr. MacLarty's technique in placing the tube did not conform with current veterinary literature (which indicates that before advancing the tube, the tube's tip first be withdrawn from the incision site with forceps into the oral cavity; that the tube next be curved towards the stomach, and then manually advanced through the pharynx into the esophagus -- visualizing the tube's passage to ensure proper movement into the esophagus).

11. Dr. MacLarty states, but did not record in the patient's record, that he checked the tube's placement by injecting: a.) 3 ml of sterile saline, and looking for swelling and assessing ease of fluid administration; and b.) 5 ml of air and, auscultating the cranial abdomen while gently palpating the stomach, and listening for borborygmus; which he states he did not hear. Such steps, however, even assuming they were undertaken, would not have ensured that the tube was properly placed.

12. To ensure that the tube had been properly placed, Dr. MacLarty should have radiographed the cat's esophagus (while placing a small amount of water soluble contrast in the tube). He did not do this.

13. Responding to the complaint that caused the Board to investigate this matter, Dr. MacLarty states that, at approximately 6:00 p.m., that same evening, Tootsie was

awake with good vital signs and reflexes, and could lift her head. Dr. MacLarty, however, did not record this information, or any other information showing Tootsie's progress, in the patient's record.

14. Later, that same evening, at approximately 7:30 p.m., Dr. MacLarty discharged Tootsie, without conducting a careful evaluation of tube function and the animal's response to feeding.

15. On or about October 22, 2004, Dr. MacLarty contacted the Minnemas, who advised him that Tootsie was given food via the esophagostomy tube that morning, but still was a little depressed.

16. On or about October 23, 2004, after noting that Tootsie appeared significantly worse, the Minnemas presented their cat to the Bethany Centennial Animal Hospital, where she was examined by Dr. Edward Heir. Dr. Heir took a single lateral radiograph of the entire cat (which appears to show that the tube was not properly placed). Dr. Heir removed the feeding tube, noting that it was small and clogged, and had a sharp end.

17. Per Dr. Heir's recommendation, the Minnemas immediately took Tootsie to the Pet E.R., where she was seen by Dr. Louis A. DelGiudice. Dr. DelGiudice also radiographed Tootsie. The radiographs show a large amount of food material present within the subcutaneous space along the left body wall (which suggests that the tube had been inserted along the side of the esophagus and into the subcutaneous space in the left thoracic region).

18. Dr. DelGiudice attempted to surgically clean out the foreign matter. Shortly after surgery, Tootsie died.

## CONCLUSIONS OF LAW

Based upon these Findings of Fact, the Board makes the following Conclusions of Law:

1. On or about October 21, 2004, Dr. MacLarty assumed the care of "Tootsie," a fifteen-year old female Calico cat (to wit: Tootsie's chief complaint on presentation was that she was "anorexic" and has "continued to loose weight" since undergoing a thyroidectomy). Dr. MacLarty inserted a feeding tube and, to perform this procedure, anesthetized Tootsie with propofol and placed her on IV fluids, but failed to note in the patient's record: a.) the amount of propofol (mg or ml) that he administered to Tootsie; and b.) the rate, type, and total amount of fluids administered to the cat intravenously. In so doing, Dr. MacLarty did not comply with the record-keeping requirements for companion animals, a violation of COMAR 15.14.01.10A(7) (a veterinarian shall record the amount and frequency of any medication given).

2. Given the difficulty he encountered in advancing the tube, standard veterinary care called for Dr. MacLarty to radiograph the subject animal to ensure that the tube was properly placed -- a step he failed to take. Additionally, standard veterinary care called for Dr. MacLarty to have conducted a more thorough evaluation of the tube function and the animal's response to feeding before discharging the subject animal. For his failure to perform either one of these steps, Dr. MacLarty's post-operative care was substandard, a violation of COMAR 15.14.01.07.

3. After placing the feeding tube, Dr. MacLarty did not record the progress of the subject animal in the patient's record. In so doing, Dr. MacLarty did not comply with the record-keeping requirements for companion animals, a violation of COMAR 15.14.01.10A(8) (a veterinarian shall record the animal's progress and disposition).

## ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, finding that Arthur MacLarty, D.V.M., License No. 5404, violated COMAR 15.14.01.07 and 15.14.01.10, it is this 25th day of August, 2005, by the State Board of Veterinary Medical Examiners, **ORDERED**:

(1) That Dr. MacLarty pay a civil penalty in the amount of Eight Hundred Dollars ($800);

(2) That Dr. MacLarty's license to practice veterinary medicine in this State is suspended for a period of two weeks, however, this suspension is stayed; and

(3.) That Dr. MacLarty is placed on probation for six months, under the conditions that he: a.) obey all laws and regulations governing the practice of veterinary medicine in this State; and b.) pay the civil penalty within thirty (30) days from the date of this Consent Agreement.

8-25-05
Date

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

**CONSENT**

I, Arthur MacLarty, D.V.M., acknowledge that I had an opportunity to consult with counsel before entering into and signing this document. By this Consent, I hereby acknowledge that the Board, by a preponderance of the evidence, could prove the Findings of Fact and Conclusions of Law contained herein. Accordingly, in order to resolve these matters, I agree to accept and submit to the foregoing Consent Agreement, consisting of 6 pages.

I acknowledge the validity of this Consent Agreement as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the laws of the State of Maryland. I also affirm that I am waiving my right to appeal from this

Consent Agreement.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Agreement.

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

22 Aug 05
Date

Arthur MacLarty, D.V.M.
Respondent

**NOTARY**

**STATE OF** Maryland

**CITY/COUNTY OF** Frederick

**I HEREBY CERTIFY** that on this 22nd day of August, 2005, before me, a Notary Public of the State and City/County aforesaid, personally appeared Arthur MacLarty, 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.

Notary Public

My Commission expires: PATRICIA J. GOODRICH NOTARY PUBLIC STATE OF MARYLAND My Commission Expires November 1, 2008

PATRICIA J. GOODRICH NOTARY PUBLIC FREDERICK CO. MD