

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

IN THE MATTER OF:

*

BILLY W. BENSON, D.V.M.

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DOCKET NO. 17-47

LICENSE NO. 2720

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CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order ("Consent Agreement"), dated this 11th day of May, 2018, is between the State Board of Veterinary Medical Examiners ("SBVME" or "Board") and Billy W. Benson, D.V.M. ("Dr. Benson"), License No. 2720. This Consent Agreement resolves the charges filed by the SBVME on or about March 1, 2018 in Docket No. 17-47 alleging that Dr. Benson 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 dated March 9, 2018, Dr. Benson advised the Board of his decision not to contest the charge and to waive a right to a hearing on the charges. He further would pay the civil penalty proposed. By entering into this Consent Agreement, Dr. Benson waives the right to a hearing and an appeal on the charging document in Docket Number 17-47.

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

Billy W. Benson, D.V.M., License Number 2720, by entering into and signing this Consent Agreement, 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. Benson violated COMAR 15.14.01.07 (Professional Judgment and Practice) in his treatment and care of "Winnie," an 11-year-old Norwich Terrier owned by Howard P. Colhoun, as follows:

1. At all times relevant to these charges, Dr. Benson was a veterinarian licensed to practice in the State of Maryland, where he has been licensed since 1984. Dr. Benson has a prior disciplinary history with the Board. In April of 2000, the Board issued an order finding Dr. Benson guilty of a violation of COMAR 15.14.01.04 (Professional Conduct) arising from Dr. Benson's attempt to remove a tattoo from a human patient. Dr. Benson paid \$500.00 in civil penalties, had his license suspended for one year (with all but two weeks stayed), and served five years of probation, which he completed. In addition, in 2013, the Board entered a Civil Penalty Final Order against Dr. Benson as a result of record keeping violations. Finally, in January of 2016, Dr. Benson entered into a Consent Agreement with the Board arising from his failure to maintain patient records for a minimum of three years in violation of COMAR 15.14.01.10F, whereby he paid a \$1,200.00 civil penalty, completed an online record keeping course, and served a six month period of probation.

2. At the time of the events described in these charges, Dr. Benson was the owner and responsible veterinarian of Advanced Veterinary Complex, Inc. ("Hospital") (License No. 03-062), located at 501 Main Street, Reisterstown, MD 21136.

3. On or about December 18, 2016, Howard Colhoun ("Mr. Colhoun") and the caretaker of his property, Catherine Toms ("Ms. Toms"), took an 11 year-old spayed female Norwich Terrier, "Winnie,"

owned by Mr. Colhoun, to Hospital for treatment for a broken right rear leg. At Hospital, Dr. Judith Simpson ("Dr. Simpson") (License No. 4855), an associate veterinarian, was Winnie's attending veterinarian. This was the first time Winnie was treated at Hospital.

4. Dr. Simpson examined Winnie, took radiographs, and administered pain medication to Winnie. Dr. Simpson diagnosed Winnie with a fracture of her right rear tibia and fibula. Dr. Simpson noted in the medical record that bone was visible through a wound in Winnie's right rear leg. Dr. Simpson advised Mr. Colhoun and Ms. Toms of the findings and recommended that Winnie receive intravenous ("IV") antibiotics and pain medication. Mr. Colhoun and Ms. Toms were advised that Winnie's leg would require surgical repair. Dr. Simpson stated that she did not perform orthopedic surgery but that Dr. Benson, Hospital's owner and responsible veterinarian, did perform orthopedic surgery. Dr. Benson was not working at Hospital that day so Dr. Simpson texted Dr. Benson a copy of Winnie's radiographs. Dr. Benson sent a text to Dr. Simpson stating that he could perform the orthopedic surgery on Winnie and directing which antibiotic to administer to Winnie. Dr. Benson was scheduled to be back in the clinic the following day.

5. According to Dr. Simpson's medical notes, she gave Mr. Colhoun an estimate for hospitalization, treatment, and surgery. Mr. Colhoun consented to having Winnie hospitalized. Dr. Simpson sedated Winnie, clipped and cleaned Winnie's wound, and placed a splint pending surgery. Dr. Simpson stated that Winnie was stable at the end of her shift at 10:00 p.m.

6. Dr. Benson performed surgery on Winnie on December 20, 2017, two days after Winnie was admitted to Hospital. According to Dr. Benson, "an intramuscular (IM) pin was placed normograde and four 22 gauge full cerclage wires were placed around bone fragments to stabilize the fracture." Post-operative radiographs were taken and a Robert Jones bandage was applied. Subsequently, Winnie was discharged to Ms. Toms on December 21, 2017. Winnie was placed on two antibiotics, Clindamycin and Simplicef, plus Previcox and Tussigon.

7. Following the surgery, Winnie was seen at Hospital for approximately nine follow-up visits, which included bandage changes and two sets of follow-up radiographs. After Winnie's surgery, Mr.

Colhoun had left Maryland for Florida, leaving Ms. Toms in charge of taking Winnie back to Hospital for her recheck appointments and bandage changes. Ms. Toms was in constant contact with Mr. Colhoun via phone and email. Once Winnie had recovered fully, Ms. Toms planned to fly Winnie down to Mr. Colhoun in Florida.

8. On February 18, 2017, a radiograph taken of Winnie appeared to show lytic areas of bone around the cerclage wires. The pin was migrating distally to the joint. Mr. Colhoun stated that it was his understanding that post-surgery the pin came out of Winnie's joint, became loose, and the bone did not heal well. According to Mr. Colhoun, Dr. Benson told Ms. Toms that Winnie's bone was decaying and "nothing could be done." Mr. Colhoun stated that Dr. Benson told Ms. Toms that there was a 50/50 chance Winnie's leg would need to be amputated. After leaving Hospital, Ms. Toms immediately contacted Mr. Colhoun in Florida and they decided that Ms. Toms should take Winnie for a second opinion.

9. On February 20, 2017, Ms. Toms took Winnie to Mt. Carmel Animal Hospital ("MCAH") (License No. 03-036) for a second opinion. MCAH was Winnie's regular veterinary practice and had been closed the day of the initial injury. Dr. Pat Steele (License No. 2542), one of MCAH's owners and responsible veterinarians, was Winnie's attending veterinarian. Dr. Steele reviewed Winnie's radiographs and told Ms. Toms and Mr. Colhoun that the pin in Winnie's leg had twisted, the cerclage wire had slipped, and there was nothing holding the bone together. However, Dr. Steele believed that Winnie's leg could be repaired with another orthopedic surgery.

10. Subsequently, MCAH contacted Dr. Ronald Fallon ("Dr. Fallon") (License No. 3035), an ambulatory orthopedic surgeon based out of Ellicott City, to discuss Winnie's case and set up a surgical appointment.

11. On February 20, 2017, Dr. Fallon performed surgery on Winnie's leg at MCAH, including inserting a plate and screws, and performing a bone graft. Following the surgery performed by Dr. Fallon, Winnie recovered well.

12. Mr. Colhoun filed a complaint with the Board against Dr. Benson, alleging that Dr. Benson provided substandard care in his surgery and treatment of Winnie. First, Mr. Colhoun alleged that the surgery Dr. Benson performed on Winnie was a failure. Mr. Colhoun was upset that Dr. Benson told Ms. Toms and him that nothing further could be done for Winnie's leg, which, as evidenced by Winnie's successful subsequent surgery, was not good advice. Mr. Colhoun maintains that Dr. Benson should have referred Mr. Colhoun and Ms. Toms to an orthopedic specialist from the outset. Finally, Mr. Colhoun stated that Dr. Benson did not appear to take any further interest in Winnie's case or follow up to see how Winnie was doing.

13. The Board, having obtained medical records and investigated the complaint, determined that Dr. Benson has violated the Veterinary Practice Act. Although the Board did not determine that Dr. Benson violated the appropriate standard of care with respect to the surgery itself, Dr. Benson subsequently did not conform to those minimal standards of care and treatment which are customary among veterinarians in this State when, after reviewing the radiographs taken on February 18, 2017, Dr. Benson failed to offer any treatment options other than amputation for Winnie and/or failed to refer Winnie to an orthopedic specialist for another opinion.

Based on the foregoing findings of fact, the SBVME concludes that Dr. Benson violated COMAR 15.14.01.07 (Professional Judgment and Practice), in his care and treatment of "Winnie," an 11-year-old Norwich Terrier owned by Howard P. Colhoun, by failing to refer Winnie to an orthopedic specialist after problems related to the first surgery became apparent; and failing to offer Mr. Colhoun any treatment option other than amputation of the leg.

Taking the facts and circumstances into consideration, including the nature of the violation, the veterinarian's prior disciplinary history at the time of the complaint, and his good faith efforts to resolve this matter promptly, 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 11th day of May, 2018, by the State Board of Veterinary Medical Examiners, ORDERED that for violation of COMAR 15.14.01.07 (Professional Judgment and Practice) Dr. Benson is assessed the following sanctions:

- (a) Dr. Benson shall pay a civil penalty of \$1000.00, payable to the "Maryland Department of Agriculture" with the notation "SBVME – 17-47," within thirty (30) days of the date of this Order. The Board acknowledges full payment of the civil penalty by check received on April 6, 2018;
- (b) Dr. Benson's license to practice veterinary medicine shall be suspended for one week, stayed, pending successful completion of probation and other terms and conditions of this Consent Agreement and Order;
- (c) Dr. Benson shall serve a period of probation of one year 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 insure compliance with Board regulations. 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, and the Board ordering the veterinarian to comply with the sanctions; in this case, suspension of the license for up to one week; and
- (d) As an additional condition of probation, Dr. Benson shall complete six hours of continuing education ("CE"), pre-approved by the Board, in small animal orthopedic surgery within 6 months of this Order. To verify completion of all required CE, Dr. Benson's CE records may be subject to audit by the Board. Within 30 days of completion

of this CE, Dr. Benson shall forward to the Board documentation from the CE provider showing proof of completion of the CE credits required under this Order. Proof from the CE provider shall include Dr. Benson'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.

WITNESS the hand of the State Board of Veterinary Medical Examiners, State of Maryland, this
11th day of May, 2018.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

A handwritten signature in black ink, appearing to read 'D. Handel', is written over a horizontal line.

David Handel, D.V.M.

President

State Board of Veterinary Medical Examiners
Maryland Department of Agriculture

CONSENT

I, Billy W. Benson, 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.

May 10, 2018
Date

Billy W. Benson, DVM
Billy W. Benson, D.V.M.

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 10 of May, 2018 before me, a Notary Public of the City/County aforesaid, personally appeared Billy W. Benson, 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.

Toccara Myers
Notary Public

My commission expires:

01/06/2020

TOCCARA MYERS
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 01-06-2020