

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

v.

CASE NO. 1118A

**DANIEL TOLER, DVM,
VETERINARIAN LICENSE NO. 9634,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

After due investigation of allegations received in a written complaint, the West Virginia Board of Veterinary Medicine (“Board”) determined there was probable cause to believe that Respondent, Daniel Toler, DVM (“Dr. Toler”), exhibited unprofessional conduct in the practice of veterinary medicine in violation of certain provisions of W. Va. Code §§ 30-10-1 *et seq.* and W. Va. Code R. §§ 26-1-1 *et seq.* The Board gave Dr. Toler written notice of the allegations against him and the opportunity to request an administrative hearing under the rules of the Board and the laws of this State. Rather than proceeding to an administrative hearing, the parties have agreed to the entry of this *Consent Agreement and Order* to resolve and dispose of this matter.

FINDINGS OF FACT

The Board adopts the following factual findings:

1. Dr. Toler is a licensee of the Board, holding License No. 9634, and therefore is subject to the license requirements of the Board. At all times relevant, Dr. Toler practiced veterinary medicine at Danville Animal Clinic in Danville, West Virginia.

2. On or about November 19, 2018, the Board received a written complaint and supporting documentation from Shanna Tudor (“Ms. Tudor”) regarding the veterinary care that her dog “Sophie” received from Dr. Toler at Danville Animal Clinic.

3. Ms. Tudor’s complaint alleges that Sophie, who “was on her 59th day in her pregnancy and carrying a very big litter,” was presented to Danville Animal Clinic on October 16, 2018 with symptoms of sleeplessness, labored breathing, and limited mobility. Ms. Tudor alleges that she asked Dr. Toler “if a C section may need to be done” and told him that she did not think Sophie’s symptoms were labor-related. Dr. Toler “evaluated Sophie and did an x ray on her to check the status of the puppies” and “determined that she would be fine to labor and to watch for signs of straining once labor started.”

4. Ms. Tudor continues in her complaint that Sophie’s “status remained the same throughout the night of 10/16” and, therefore, she called Danville Animal Clinic “early on 10/17.” A receptionist instructed Ms. Tudor to “bring [Sophie] in at 4 if she had not had a puppy by then.” However, Ms. Tudor took Sophie to the clinic at approximately 2:40pm because she had fallen and was unresponsive. Another veterinarian performed emergency surgery on Sophie, after which she informed Ms. Tudor that “all of Sophie’s puppies had died and she was struggling to survive.” At that point, Ms. Tudor planned to take Sophie to an emergency animal hospital in Charleston, West Virginia, as the Danville Animal Clinic was closing and did not have night staff to care for her. Ms. Tudor reports that Sophie “died 10 minutes away from the emergency vet” and claims that “had Sophie been C sectioned on 10/16 this all could have been prevented.”

5. Dr. Toler responded to Ms. Tudor’s complaint by letter dated December 10, 2018, with certain of Sophie’s medical records enclosed. In his response, Dr. Toler states that, during his examination of Sophie on October 16, 2018, “[s]he was groaning some and having trouble

getting comfortable, but no more than I have seen in other pets with large abdomens in late gestation.” Dr. Toler reports the following additional findings: “I found nothing unusual on the x-ray and no signs of fetal death. Sophie also did not have any vaginal discharge other than a small amount of clear mucus, which is not unusual in late gestation. On the exam of Sophie I did not find any abnormal swelling of her hind legs.” Dr. Toler also states that, “[b]ecause Sophie had not begun producing milk, had no abnormal vaginal discharge and was still 4 days from a normal length of gestation, I recommended giving Sophie some more time.” Among the medical records attached to Dr. Toler’s response are handwritten notes regarding Sophie’s visit on October 16, 2018 and a corresponding “Physical Exam Checklist” that is not completed.

6. The Board’s Complaint Committee reviewed Ms. Tudor’s complaint, the response of Dr. Toler, and the medical records and other documents submitted therewith, and found probable cause to believe that Dr. Toler failed to maintain complete patient medical records, including lack of documentation of a thorough physical and diagnostic examination to support his medical decisions, in violation of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-8.1.e, 26-4-3.10, 26-4-5.1.b, 26-4-5.1.c, and 26-4-5.2.a.

7. Upon recommendation of the Complaint Committee, and after reviewing the aforementioned complaint, response, and accompanying documents, the Board, by majority vote at its meeting on January 4, 2019, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against Dr. Toler.

8. The Board issued a *Complaint and Statement of Charges* informing Dr. Toler that it had found the existence of probable cause at its January 4, 2019 meeting.

CONCLUSIONS OF LAW

1. Dr. Toler is a licensee of the Board, holding License No. 9634, and is therefore subject to the license requirements of the Board.

2. The Board is a state entity created and governed by W. Va. Code §§ 30-10-1 *et seq.*, and is empowered to regulate the practice of veterinary medicine in the State of West Virginia.

3. In order to carry out its regulatory duties, the Board may suspend, revoke, or otherwise discipline an individual's license to practice veterinary medicine under the authority granted to it by W. Va. Code §§ 30-10-5 and 30-10-19 and W. Va. Code R. §§ 26-1-9 and 26-2-1 to 26-2-6.

4. Dr. Toler was notified of the allegations against him pursuant to the rules of the Board and the laws of this State.

5. The conduct described in the above *Findings of Fact* would, if proven, constitute violations of W. Va. Code § 30-10-19 and W. Va. Code R. §§ 26-1-8, 26-4-3, and 26-4-5. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Daniel Toler, by signing this *Consent Agreement and Order*, acknowledge the following:

1. After having had the opportunity to consult with an attorney of my choice, I sign this Consent Agreement and Order voluntarily, freely, without compulsion or duress, and understand that my signature has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth in this document.

3. I am aware that I may pursue this matter through appropriate administrative and/or court proceedings. I am aware of my legal rights regarding this matter, but I have chosen to waive those rights intelligently, knowingly, and voluntarily.

4. I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

5. I admit that my actions violated the statutes and rules of the Board of Veterinary Medicine.

6. I acknowledge that the execution of this document constitutes disciplinary action by the Board and is therefore considered to be public information.

The Respondent, Daniel Toler, by affixing his signature hereto, agrees to the following Order.

ORDER

Based on the foregoing, the Board does hereby ORDER and DECREE as follows:

1. Dr. Toler is hereby REPRIMANDED for his actions in this matter.
2. Within six months from the date of entry of this Order, Dr. Toler shall complete three hours of Board-approved continuing education on the subject of medical recordkeeping and then submit to the Board a certificate of completion or other documentary proof of successful completion. These three credit hours of continuing education will not count toward the continuing education requirement for license renewal.
3. Within six months from the date of entry of this Order, and following completion of the above-described continuing education, Dr. Toler shall submit to the Board for its review a total of five patient medical records completed and maintained by him in the course of his practice.

4. Within six months from the date of entry of this Order, Dr. Toler shall reimburse the Board the costs of this proceeding, including but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this case.

5. Any failure to comply with all provisions in this Consent Agreement and Order may result in additional disciplinary action, up to and including the suspension of Dr. Toler's license to practice veterinary medicine in the State of West Virginia.

6. This document is a public record as defined in West Virginia Code § 29B-1-2(5). The Board is bound by law and by this Agreement to report the results of all disciplinary actions, including this matter, for posting in the AAVSB Veterinary Practitioners Disciplinary Database and for posting on the Board's website.

7. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

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In recognition of this *Consent Agreement and Order*, we hereby affix our signatures.

WEST VIRGINIA BOARD OF VETERINARY MEDICINE

By: John R. Wilson DVM
Dr. John R. Wilson, Board Chairman

Entered: 2-20-2019
Date

REVIEWED AND AGREED TO BY:

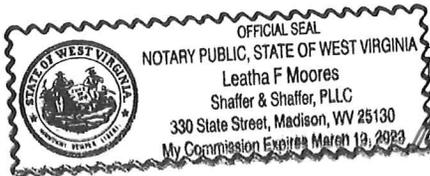
Daniel Toler, DVM
Daniel Toler, DVM
Respondent

2-14-19
Date

This day personally appeared before me, Daniel Toler, whose name is signed to the foregoing document and who is known to me, having acknowledged before me that the statements in the foregoing document are complete, true and correct, to the best of his knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 14th day of February, 2019.

My Commission expires: 3-13-23



[Signature]
Notary Public