

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,
Complainant,**

v.

Case No. 1015A

**DANIEL CAIN,
Veterinarian License Number: 8008
Respondent.**

CONSENT AGREEMENT AND ORDER

After due investigation of a written complaint, the West Virginia Board of Veterinary Medicine (Board) determined that there was probable cause to believe that Daniel Cain (Respondent) has exhibited unprofessional conduct in the practice of veterinary medicine, in violation of the provisions of W. Va. Code § 30-10-1 *et seq.* and the Rules of the Board at W. Va. Code R. § 26-1-1 *et seq.* The Respondent was provided with written notice of the allegations against him pursuant to the rules of the Board and the laws of this State.

Now, in lieu of hearing, the parties have reached an agreement for the resolution of Case Number 1015A and the parties agree to entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. That Daniel Cain is a licensee of the Board with license number 8008 and is subject to the license requirements of said Board.

2. The Board is a regulatory board created for the purpose of regulating the practice of veterinary medicine. W. Va. Code § 30-10-1 *et seq.*

3. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or otherwise discipline an individual's veterinary medicine license because of authority granted to it by W. Va. Code §§ 30-10-5 and 30-10-19.

4. That on or about October 13, 2015, the Board received a written complaint from Heather Jamison complaining of the treatment that her animal had received while in the care of the Respondent.

5. The Respondent at all times relative to this Complaint owned "Cain Veterinary Clinics."

6. The written complaint alleged that an approximate ten year old male dog, Peanut, had been taken to the Respondent's Clinic for treatment of two knots on the Peanut's right hind leg on August 14, 2015.

7. Respondent examined Peanut and ordered blood work in order to ensure that Peanut was able to withstand the anesthesia for the medical procedure to remove the two knots on his right hind leg.

8. Approximately one month after the initial examination, Ms. Jamison called the Respondent since she had heard nothing from him in regards to the blood work results.

9. At that point, surgery was scheduled for October 7, 2015. Ms. Jamison, upon picking Peanut up later that day, discovered that Peanut had been neutered instead of the two knots removed on Peanut's right hind leg.

10. A staff member called the Respondent upon discovery of this error, and Ms. Jamison was told that she would not be charged for the neuter procedure nor would she be charged for the surgery to remove the two knots from Peanut's right hind leg. Surgery was then scheduled for November 25, 2015; however, upon reflection Ms. Jamison cancelled the surgery.

11. Respondent did file a timely response to these allegations, and states that he did indeed perform a neuter procedure on Peanut on October 7, 2015, and did not remove the two knots on Peanut's right hind leg. However, he states that the Peanut's medical file and appointment schedule book both reflected that Peanut was to be neutered that day. Moreover, he did state that during the neuter procedure he remarked to his assistant as to why he was performing a neuter procedure on a ten year old dog and not removing the lumps.

12. The Respondent states that he did not suggest neutering Peanut in order to prevent prostate problems.

13. The Respondent is unsure how this communication error happened regarding what procedure was to be performed by him. Moreover, the Respondent was not present when the initial intake was taken by his staff, and his staff insists that a neuter procedure was requested by Ms. Jamison.

14. Upon review of this matter by the Board's Complaint Committee, it was found that there were deficiencies in the medical record keeping by the Respondent.

15. That those acts described in Paragraphs 1 through 14 above, demonstrate that the Respondent failed to provide the proper care and treatment of the dog identified as Peanut by failing to perform the correct medical procedure, but instead improperly performing a neuter procedure, and by failing to maintain proper medical records.

16. That upon recommendation of the Complaint Committee, after reviewing the complaint and accompanying documents, the Board, by majority vote, at its Board meeting on November 19, 2015, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against the licensee, Daniel Cain.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice veterinary medicine, pursuant to W. Va. Code § 30-10-11.
3. That the Board has defined unprofessional conduct by adopting the standards of practice at W. Va. Code R. § 26- 4-1 *et seq.* and violations of these standards of practice may be grounds for disciplinary action by the Board pursuant to W. Va. Code § 30-10-19(g)(3).
4. That the Board served a *Complaint* upon the Respondent pursuant to the laws and regulations of West Virginia.
5. The Respondent's actions as outlined in the *Findings of Fact* constitute conduct, practices or acts in violation of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-4-4.1 and 26-4-4.9.A.

CONSENT OF LICENSEE

I, Daniel Cain, by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

2. That 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 herein.

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

4. That 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. That I admit that my actions were a violation of the Board's governing statute and rules.

The Respondent, Daniel Cain, by affixing his signature hereon, agrees to the following:

ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent is hereby REPRIMANDED for his actions in this case matter.
2. Respondent shall complete six (6) hours of Board approved continuing education hours in Medical Record keeping by June 30, 2016.
3. Respondent 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. Payment shall be made no later than June 30, 2016.

4. Any violation of this *Consent Agreement and Order*, or failure to adhere to its terms may result in further disciplinary action against the Respondent, including the immediate suspension of the Respondent's license to practice veterinary medicine.

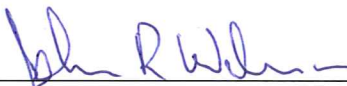
5. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the AAVSB Veterinary Practitioners Disciplinary Database.

6. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).

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

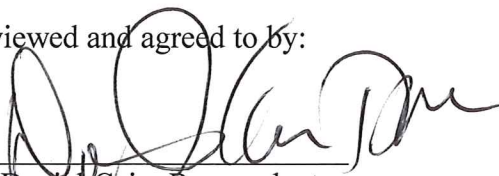
In recognition of this *Consent Agreement and Order* and these terms, we hereby affix our signatures.

WEST VIRGINIA BOARD OF
VETERINARY MEDICINE

By: 
Dr. John Wilson
Chairman

Entered: 1-16-2016
Date

Reviewed and agreed to by:


Dr. Daniel Cain, Respondent

1-11-16
Date