

STATE OF MAINE
STATE BOARD OF VETERINARY MEDICINE

IN RE:)	
)	
ALAN K. TOOTHAKER, D.V.M.)	
)	CONSENT AGREEMENT
Case Nos. 2022-VET-18117 &)	
2022-VET-18264)	

INTRODUCTION

This document is a Consent Agreement concerning disciplinary action against the license of Alan K. Toothaker, D.V.M. to practice veterinary medicine in the State of Maine. The parties to the Consent Agreement are Alan K. Toothaker, D.V.M. ("Dr. Toothaker"); the State Board of Veterinary Medicine ("Board"); and the Office of the Maine Attorney General ("Attorney General"). The Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5-A).

FACTS

1. At all times pertinent to this matter, Dr. Toothaker has been licensed by the Board as a veterinarian, license number VT827, and practicing in Ellsworth, Maine.
2. On February 2, 2022, Dr. Toothaker saw a feline patient who had been struggling to urinate and had a small amount of blood visible in his urine while at home. Dr. Toothaker ran a urinalysis, bloodwork, and performed a radiograph.
3. Dr. Toothaker's records for the visit do not include a medical history or adequate findings of physical exam, namely the state of the feline's skin, abdomen, and genito-urinary system.
4. Dr. Toothaker's records do not include the results of the radiograph.
5. Dr. Toothaker's records do not include a differential diagnosis.

6. Dr. Toothaker's records do not include the method of urine collection, which is a necessary factor in evaluating the observed blood in the collected urine.
7. Dr. Toothaker diagnosed the feline patient with an infection, without accounting for the diagnostic test results that showed no elevated white blood cell count, a glucose level of 20++, and a small amount of blood in the urine.
8. Dr. Toothaker did not supply the radiographs in his control or possession related to Case No. 2022-VET-18117.
9. The feline patient returned home and was not normally urinating or ambulating and died within a few days.
10. On April 22, 2022, the Complaint Office received a second complaint regarding Dr. Toothaker that alleged Dr. Toothaker had provided advice over the phone to a dog owner regarding the dog's ingestion of DeCon. This complaint was filed by a third party.
11. Dr. Toothaker filed a response to the complaint in which he seemed to know to which patient the complainant was referring to, but did not identify the patient or the owner.
12. On August 25, 2022, the Complaint Office, on behalf of the Board, sent Dr. Toothaker a request for additional information, including the pet's name, the owner's name and contact information, and any related records. Dr. Toothaker never responded to this request from the Board.
13. Dr. Toothaker has been disciplined by the Board on two previous occasions, Case Nos. 2007-VET-3584 and 2016-VET-12790, which involved a recordkeeping violation and a finding of unprofessional conduct in Case No. 2007-VET-3584, and a finding of gross negligence or incompetence in Case No. 2016-VET-12790.

14. On January 18, 2023, following a presentation of these matters, the Board voted to offer Dr. Toothaker this Consent Agreement in order to resolve Case Nos. 2022-VET-18117 and 2022-VET-18264.
15. Absent acceptance of this Consent Agreement by signing and dating it and returning it to Jessica Farnham, Complaint Coordinator, Office of Professional and Occupational Regulation, 35 State House Station, Augusta, Maine 04333-0035 by **March 17, 2023**, the Board will resolve this matter by holding an adjudicatory hearing.

COVENANTS

16. Dr. Toothaker admits to the facts as stated above and admits that such conduct constitutes grounds for imposing discipline against his license as follows:
- a. Pursuant to 32 M.R.S. § 4864(11) for unprofessional conduct, defined more particularly by Board Rule Chapter 7, § 23, as engaging in conduct that evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice of veterinary medicine by failing to adequately account for contrary or complicating diagnostic test results in reaching a diagnosis of infection for the feline patient in Case No. 2022-VET-18117;
 - b. Pursuant to 10 M.R.S. § 8003(5-A)(A)(5) for violating Board Rules, Chapter 5, Section 2: "*Veterinarians shall maintain adequate medical records, which includes: chief presenting complaint of patient; findings of physical examination; results of laboratory, radiographic, or any other diagnostic procedures; differential diagnosis; and treatment given, including any surgical procedures, drugs with route of administration, and dosage*" by failing to fully record the findings of physical exam and the urine collection method necessary to evaluate

the urinalysis results, the results of the radiograph, and the differential diagnosis for the feline patient in Case No. 2022-VET-18117; and

- c. Pursuant to 10 M.R.S. § 8003(5-A)(A)(10) for failing to produce to the Board requested documents in Dr. Toothaker's possession or under his control concerning a pending complaint, including the radiograph(s) related to Case No. 2022-VET-18117, and any and all records requested related to Case No. 2022-VET-18264.

17. As DISCIPLINE for the conduct admitted to in paragraph 15 above, Dr. Toothaker agrees to accept the following DISCIPLINARY ACTION:

- a. A CENSURE;
- b. A CIVIL PENALTY in the amount of two thousand dollars (\$2,000.00), composed of one thousand dollars (\$1,000.00) related to Case No. 2022-VET-18117 and one thousand dollars (\$1,000.00) related to Case No. 2022-VET-18264, which shall be due within 30 days of the date of the last signature to this Consent Agreement; and
- c. PROBATION for a period of two (2) years, beginning on the date of the last signature to the Consent Agreement, during which Dr. Toothaker's license will be subject to the following conditions:
 - i. CONTINUING EDUCATION. Dr. Toothaker must complete a minimum of three (3) hours of continuing education on the topic of veterinary medical recordkeeping within two (2) years of the date of the last signature to the Consent Agreement. Dr. Toothaker agrees to submit the proposed continuing education course(s) to the Board's

Complaint Officer for his prior approval no later than 30 days before the date of the course. Dr. Toothaker further agrees to submit to the Board's Complaint Officer proof of completion immediately upon completion of each course. Dr. Toothaker agrees that these continuing education hours will be in addition to those required for the standard licensure renewal eligibility requirement and that he will be responsible for all costs associated with the continuing education hours; and,

- ii. RECORDS REVIEW. Dr. Toothaker agrees to submit to the Board's Complaint Officer, on a quarterly basis throughout the 2-year period of probation, beginning on March 15, 2023, three (3) medical records maintained by Dr. Toothaker for the Complaint Officer's review and approval.

- 18. Violation of any of the terms or conditions of this Consent Agreement by Dr. Toothaker shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of licensure or re-licensure.
- 19. This Consent Agreement is not appealable and is effective until modified or terminated by the parties hereto.
- 20. This Consent Agreement may be modified or terminated only pursuant to a written agreement signed by all the parties to this Consent Agreement.
- 21. The Board and the Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.
- 22. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.

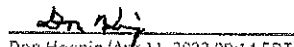
23. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
24. This Consent Agreement becomes effective on the date of the last necessary signature below.
25. The Board and Dr. Toothaker agree that no further agency action will be initiated against his license by the Board based upon the specific violations admitted to herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that other allegations are brought against Dr. Toothaker, and this Consent Agreement may be introduced as evidence in any future adjudicatory hearing involving Dr. Toothaker. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Toothaker.
26. This Consent Agreement may be signed in counterparts, with all counterparts together constituting one original instrument. Signatures below may be applied and/or saved electronically, and such electronic signatures will be given the same effect as a paper document signed in ink.
27. **Dr. Toothaker acknowledges by his signature hereto that he has read and understands this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will, and that he agrees to abide by all terms and conditions set forth herein.**

Signature page follows

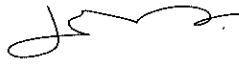
Dated: 3/17/23


ALAN K. TOOTHAKER, D.V.M.

Dated: Apr 11, 2023


Don Hoenig (Apr 11, 2023 09:14 EDT)
DONALD HOENIG, V.M.D.
Chair, State Board of Veterinary Medicine

Dated: Apr 11, 2023


JENNIFER A. WILLIS
Assistant Attorney General