

STATE OF MAINE
BOARD OF VETERINARY MEDICINE

In re:)
ALAN K. TOOTHAKER, V.M.D.) CONSENT AGREEMENT
2007-VET-3584)

This document is a Consent Agreement regarding discipline imposed on the license of Alan K. Toothaker, V.M.D. to practice veterinary medicine in the State of Maine. The parties to this Consent Agreement are: Alan K. Toothaker ("Dr. Toothaker"), the Maine Board of Veterinary Medicine ("the Board") and the Maine Office of the Attorney General. This Consent Agreement is entered into pursuant to 32 M.R.S.A. § 4864 and 10 M.R.S.A. § 8003(5-A).

FACTS

1. Dr. Toothaker is licensed by the Board as a veterinarian, license # VT-827.
2. On or about April 30, 2007, the Board received a complaint against Dr. Toothaker filed by Judy Emerson regarding surgery performed on her dog by Dr. Toothaker on or about April 4, 2007. The Board subsequently docketed that complaint as 2007-VET-3584.
3. On September 20, 2007, following the initial presentation of the complaint, the Board voted to offer this Consent Agreement to Dr. Toothaker to resolve complaint

2007-VET-3584. Absent acceptance of this Consent Agreement by October 30, 2007, the Board will resolve this matter by holding an adjudicatory hearing.

4. Dr. Toothaker has cooperated with the Board and the Office of the Attorney General.

5. On or about April 4, 2007, Dr. Toothaker performed a neuter of "Baby" owned by Judy Emerson.

6. At the time of the neutering procedure, Dr. Toothaker was unable to remove the right testicle.

7. Dr. Toothaker did not inform Judy Emerson of the fact that he had been unable to remove the right testicle and she was under the impression the operation had resulted in successful removal of both testicles.

8. The medical records for the neutering procedure dated April 4, 2007 do not include findings of physical exam adequately reflecting the state of the dog prior to, during, or following the surgical procedure.

9. The medical records for the neutering procedure dated April 4, 2007 do not include the drug dosages administered during the dog's neutering procedure.

COVENANTS

8. Dr. Toothaker admits that under the circumstances of this case such conduct constitutes grounds for disciplinary action by the Board pursuant to 32 M.R.S.A § 4864(11), 10 M.R.S.A. § 8003(5-A)(A)(5) and Board Rule chapter 7 § 23 (02-285 C.M.R. ch.

7 § 23) for unprofessional conduct; and 10 M.R.S.A. § 8003(5-A)(A)(5) and Board Rule chapter 5 § 2 (02-285 C.M.R. ch. 5 § 2) for failing to maintain adequate medical records.

9. As DISCIPLINE for the conduct admitted above, Dr. Toothaker agrees to:

- a) Accept a WARNING from the Board; and
- b) Provide the Board with COPIES OF FIVE (5) SURGICAL RECORDS on a quarterly basis for a period of two (2) years (totaling forty (40) records) from his practice for review. Dr. Toothaker shall submit the first set of records on November 1, 2007, and thereafter shall submit records on the first day of each month that begins a calendar quarter (January, April, July, October).

10. The Board agrees to take no further disciplinary action against Dr. Toothaker based on the conduct described herein, but the Board reserves the right to take action, including disciplinary action, which it deems appropriate and which is allowed by law, if Dr. Toothaker fails to fully comply with the terms of this Consent Agreement. In taking any action, including disciplinary action, based on Dr. Toothaker's failure to fully comply with this Consent Agreement, the Board may consider the circumstances described in the statement of Facts above and any acknowledgements that Dr. Toothaker has made in this Agreement.

11. The Board and the Office of the Attorney General shall have complete access to Dr. Toothaker's practice records with regard to this Consent Agreement. The Board

and the Office of the Attorney General may communicate and cooperate with regard to this Consent Agreement and/or any matter related thereto.

12. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto. It shall become a permanent part of the Board's records.

13. This Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

14. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

15. Dr. Toothaker acknowledges by his signature hereto that he has read 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.

DATED: 10/29/07



ALAN K. TOOTHAKER, V.M.D.

DATED: 11/5/07



DAVID M. SPAHN, D.V.M.
Chairperson, Board of Veterinary Medicine

DATED: 11-14-07

Carrie L. Corney
~~JENNIFER A. WILLIS~~ ^p Carrie L. Corney
Assistant Attorney General