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RECEIVED and FILED by the
NEW JERSEY STATE BOARD OF
VETERINARY MEDICAL EXAMINERS
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS -
BOARD OF VETERINARY MEDICAL EXAMINERS

IN THE MATTER OF :
: Administrative Action
JONATHAN I. BACH, D.V.M. :
: CONSENT ORDER
TO PRACTICE VETERINARY MEDICINE :
IN THE STATE OF NEW JERSEY :
:

This matter was opened to the State Board of Veterinary Medical Examiners (hereinafter referred to as the "Board") following the Board's review of a consumer complaint filed by Deborah August subsequent to her purchase of a Yellow Labrador Retriever, "Philly," from the pet store, Pet Paradise, for which respondent Jonathan I. Bach, D.V.M., provided veterinary medical services. In her complaint to the Board, Ms. August alleged that Dr. Bach, engaged in professional misconduct by failing to: 1) properly diagnose Philly's condition; and 2) respond adequately to

an emergency in his treatment of her ten (10) week old puppy beginning in September through October 2006.

Ms. August purchased Philly from Pet Paradise on September 30, 2006. At the time of sale, the owner was presented with medical records indicating that Philly had been examined by Dr. Bach on or about September 28, 2006, prior to the sale, and that he had certified that Philly was fit for sale. At the time of the purchase, an antibiotic, Baytril, was dispensed to Ms. August by a pet store employee with instructions to give the puppy two (2) pills a day for ten (10) days. The owner maintains that upon questioning the issuance of antibiotics to a puppy declared fit for sale, she was informed by Pet Paradise that it was the store's standard procedure to send every puppy home with antibiotics as a preventative measure.

On the following day, October 1, 2006, Philly was extremely lethargic and was unable to play. According to the owner, the dog slept most of the day, had green mucous discharge from his nose and appeared to have difficulty breathing. Ms. August promptly called Dr. Bach. The complainant alleges that Dr. Bach was unaware that he had prescribed antibiotics for Philly. He instructed the owner to attempt to force feed the puppy and recommended that, if the dog did not respond, Philly should be taken to Garden State Veterinary Specialists (the "Hospital") as

Dr. Bach would be unavailable, due to a religious holiday, and would not be able to see Philly.

The owner presented Philly to the Hospital on the very same day, October 1, 2006. Upon his arrival, the puppy was taken for immediate emergency care. Philly was diagnosed with lung congestion due to severe pneumonia and the owner was advised that the dog only had a 30% chance of survival. On October 7, 2006, Philly's condition worsened and Ms. August elected to euthanize Philly.

In correspondence, dated November 1, 2006, to the Board, Dr. Bach denied any wrongdoing in regard to the veterinary care of Philly. He advised that he is in charge of the veterinary care provided to all new arrivals, healthy and sick puppies, at Pet Paradise. Dr. Bach confirmed to the Board that he had examined Philly on September 28, 2006 and found him to be fit for sale. Philly was then housed in a cage with a black Labrador Retriever puppy who had a fever and a clear serous nasal discharge. The puppies were later separated into different cages and the black puppy was started on Cephalexin for the next ten (10) days. His condition resolved.

The respondent asserted that Philly showed no signs of illness and hence no antibiotic medication was necessary. However, Dr. Bach asserted that, in violation of established store policy, the dog was erroneously administered Baytril by a Pet Paradise

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employee as a prophylactic antibiotic. Further, the respondent confirmed that he was contacted by the owner on October 1st and was advised of Philly's ill health. As he was going to be unavailable due to a religious holiday, he recommended that she take the dog to the Hospital if the symptoms continued.

On March 21, 2007, Dr. Bach appeared with counsel, William A. Garrigle, Esquire, at an investigative inquiry held by the Board. Respondent testified that he authorized the staff at Pet Paradise to dispense antibiotics, namely Cephalexin, to healthy puppies for preventive care. Dr. Bach further testified that, in cases where puppies may have been exposed to other sick puppies before the time of purchase or for those who display symptoms at the time of purchase, store employees are instructed to contact him and obtain his authorization before dispensing other antibiotics or medications which are kept in a locked cabinet on the premises of the store. This cabinet, according to Dr. Bach's testimony, is left open during the day and locked at night and that certain employees have the keys to the cabinet. Dr. Bach blamed the staff of Pet Paradise for dispensing the wrong antibiotic to Philly at the time of his purchase.

Moreover, respondent testified that he supplied Pet Paradise with the antibiotics that the pet store dispensed to its customers. He further testified that, in Philly's case, medications were dispensed to Philly's owner in white envelopes

that had a sticker applied to the front. A printout was on the sticker that detailed the directions for the administration of the medications. The printout contained the address of Pet Paradise. Dr. Bach conceded that since he was the prescriber of the medication and that since he was directing the dispensing of the medication, his name, license number and name of his private veterinary facility should have appeared on the label of the medicine container rather than the address of the pet store.

Additionally, Dr. Bach explained his record keeping methods for the puppies at the Pet Purchase. Specifically, the respondent testified that when he examines puppies at the pet store, he records his examination findings at that time on notes he calls his "green sheets." Dr. Bach further testified that the green sheets, which constitute a puppy's individual medical record, consists of the respondent's name, the date, the puppy's temperature and his notation of whether the puppy is fit for sale. If the animal is fit for sale, according to Dr. Bach, his medical record contain no further details or information about the puppy. If, however, Dr. Bach concludes the puppy is unfit for sale, in addition to the information listed above, the respondent's record identifies the condition which makes the puppy unfit and lists the medications he prescribes as well as the administration protocol of the medication.

The Board, following its review of the testimony, patient records, and other relevant documents in this matter, has concluded that Dr. Bach, engaged in professional misconduct, contrary to N.J.S.A. 45:1-21(e), in that he failed to adequately store and secure prescription medications left in an unlocked cabinet at the pet store for which he provided veterinary services. Additionally, the Board found that Dr. Bach engaged in professional misconduct, again in violation of N.J.S.A. 45:1-21(e), in his failure to adequately supervise the pet store employees in that he: 1) authorized unlicensed pet store employees to dispense the antibiotic Cephalexin to customers; and 2) permitted non-licensees to dispense antibiotics which resulted in the improper dispensing of Baytril to Philly.

The Board further found that Dr. Bach violated the Veterinary Medicine Practice Act and its accompanying regulations, in violation of N.J.S.A. 45:1-21(h), and specifically N.J.A.C. 13:44-4.4(b) (2) and (3), in that he failed to comply with the Board's prescription rule and: 1) permitted improperly labeled medications to be issued to store patrons, and 2) failed to ensure that prescription medications were administered properly.

Finally, the Board concluded that Dr. Bach violated its record keeping regulation in that he failed to create and maintain medical records on the animals he examined and treated in the pet store that complied with, and contained the required medical

information, required by N.J.A.C. 13:44-4.9. These facts establish a violation of N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9, and therefore provide a basis for disciplinary action.

The parties desiring to resolve this matter without the need for further disciplinary proceedings; and the respondent acknowledging and not contesting the findings of the Board; and the Board having been satisfied that the within resolution adequately protects the public health, safety and welfare, and for good cause shown;

IT IS, THEREFORE, ON THIS 26th DAY OF ~~NOVEMBER~~ ^{DECEMBER} 2007,

ORDERED THAT:

1. The respondent, Jonathan I. Bach, D.V.M., is hereby reprimanded for his conduct as described above, in violation of N.J.S.A. 45:1-21(e), N.J.A.C. 13:44-4.4 (b) (2) and (3), N.J.S.A. 45:1-21(e) and N.J.A.C. 13:44-4.9.
2. Respondent shall cease and desist from: 1) failing to adequately store and secure prescription medications at the pet store for which he provides veterinary services; 2) failing to adequately supervise pet store employees; and 3) permitting unlicensed persons to dispense medications; in violation of N.J.S.A. 45:1-21(e), N.J.A.C. 13:44-4.4 (b) (2) and (3), N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9.
3. Dr. Bach shall pay a civil penalty in the aggregate amount of \$6,000.00 for the following violations: 1) \$3,000.00 for

engaging professional misconduct, contrary to N.J.S.A. 45:1-21(e) and \$3,000 for record keeping violations. Such penalty shall be paid by certified check or money order made payable to the State of New Jersey and submitted to the State Board of Veterinary Medical Examiners at 124 Halsey Street, Post Office Box 45020, Newark, New Jersey 07101, contemporaneously with the signing of this Order. Subsequent violations will subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

In the alternative, the respondent may pay the civil penalty, totaling \$6,000.00 in equal installment payments of \$250.00 for a total twenty-four (24) months. The first payment shall be due on the fifteenth of each month beginning December 15, 2007 and every month thereafter until the total amount is paid in full.

Failure to pay the penalty simultaneously with signing this Order above will result in the filing of a Certificate of Debt, including the applicable interest permitted by the New Jersey Court Rules. Any failure to make any installment payment within ten (10) days of the due date shall cause the entire remaining balance to become immediately due and payable without further notice and may result in subsequent disciplinary proceedings before the Board for failure to comply with an Order of the Board.

4. Failure to comply with any of the provisions of this Order may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

By: Mark W. Logan VMD
MARK W. LOGAN, V.M.D.
President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

[Signature]
JONATHAN I BACH, D.V.M.

DATED: 12-13-07

Consent as to form and entry.

[Signature]
WILLIAM A. GARRIGLE, ESQUIRE
Garrigle and Palm

DATED: 12-17-07