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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
MICHAEL J. WEISS, D.V.M. :
:
TO PRACTICE VETERINARY MEDICINE : CONSENT ORDER
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 information indicating that respondent Michael J. Weiss, D.V.M., may have engaged in conduct in violation of the Veterinary Medical Practice Act, codified at N.J.S.A. 45:16-1 et seq., and its accompanying regulations, codified at N.J.A.C. 13:44-1.1 et seq. Specifically, the information indicated that the respondent had authorized ten (10) prescriptions for Percocet tablets, twelve to fifteen units as a time, in the names of three (3) dogs since January 2007.

Dr. Weiss appeared at a June 24, 2009, investigative inquiry before the Board. At this inquiry, he explained that he was treating two elderly canines, "Kirby" and "Cosmo," belonging to him and his mother, respectively, for certain arthritic conditions. He had prescribed conventional medications, namely Rimadyl, to both dogs and they responded well to the medication for a period of time. There came a point, according to the respondent, that the dogs stopped responding to Rimadyl. His veterinary medical research revealed that several practitioners were using opiates in canines for pain management. Dr. Weiss opined that Percocet has been shown to be an efficacious drug for alleviating pain in arthritic dogs that cannot bear or have limited results with anti-inflammatory drugs, such as Rimadyl. Dr. Weiss admitted authorizing the Percocet prescriptions and testified that both dogs responded well to Percocet for a long period of time. The respondent further advised that, after the dogs ceased to respond to the opiate, they were both subsequently euthanized.

Dr. Weiss also provided testimony as to Percocet prescriptions that were written for a dog named "Kane." The respondent contended that he decided to write prescriptions for "in hospital use" for use in dogs that were in severe post-surgical, orthopedic or other severe pain. He admitted that he used the patient name "Kane" for the prescription but that there was no dog of that name owed by himself or that was a patient of his

veterinary practice. In a February 12, 2009 affidavit reviewed by the Board in this matter, Dr. Weiss certified that he wrote a Percocet prescription for a dog that did not exist because compounding pharmacies require that the prescription be made out for a "patient," so he utilized a "ghost patient" for these purposes. The Board's investigation into this matter indicated that Dr. Weiss obtained approximately sixty (60) Percocet tablets in Kane's name.

The Board, following its review of Dr. Weiss' testimony and the relevant documents in this matter, concluded that the respondent engaged in the use or employment of dishonesty, deception and misrepresentation, in violation of N.J.S.A. 45:1-21(b), in that he utilized a "ghost patient," Kane, in order to obtain sixty (60) Percocet tablets.

The Board further concludes that Dr. Weiss violated its patient record regulation by failing to create and maintain medical records for Kirby, Cosmos and Kane, contrary to N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9(a). Specifically, N.J.A.C. 13:44-4.9 requires veterinarians to maintain a separate patient record for each animal, herd or flock. Additionally, the regulation mandates that all patient records accurately reflect the treatment or services rendered by the licensee. The respondent was unable to produce any medical records or notes or other records detailing the medical services, treatments or medications administered to these

dogs. The Board finds that the creation of medical records is required for all animals regardless of the relationship of the owner to the veterinarian. The Board concludes that the facts as detailed above establish a basis for disciplinary action.

Moreover, the Board finds that Dr. Weiss again violated its patient record regulation by failing to create and maintain an accurate narcotics log for his veterinary practice, contrary to N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9(a). Specifically, the logs produced by Dr. Weiss failed, among other things, to indicate proper management of the narcotics, such as, when and where the drugs were purchased, what particular patients were administered certain dosages of the drugs and the proper disposal of unused narcotics.

The parties desiring to resolve this matter without the need for further disciplinary proceedings; and the respondent waiving his right to a hearing in this matter and 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 th 18 DAY OF
AUGUST 2009, ORDERED THAT:

1. The respondent, Michael J. Weiss, D.V.M., is hereby reprimanded for his conduct as described above, in violation of N.J.S.A. 45:1-21(b), N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.1(a).

2. Respondent shall cease and desist from further violations of N.J.S.A. 45:1-21(b), N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.1(a).

3. Dr. Weiss shall pay a civil penalty in the aggregate amount of **\$10,000.00**: consisting of a **\$2,500.00** penalty for the use or employment of dishonesty, deception and misrepresentation and a **\$7,500.00** for the failure to maintain adequate medical records, including narcotics log. Payment for the civil penalty shall be submitted contemporaneously with the signing of this Order, by certified check or money order, made payable to the State Board of Veterinary Medical Examiners and shall be forwarded to Leslie G. Aronson, Executive Director, Board of Veterinary Medical Examiners, 124 Halsey Street, Sixth Floor, Post Office Box 45020, Newark, New Jersey 07101. Subsequent violations will subject respondent to enhanced penalties subject to N.J.S.A. 45:1-25.

4. Dr. Weiss is further required to provide proof of full attendance at and successful completion of a minimum of twenty-three (23) credit hours of Board approved courses of continuing education in the following areas: Twenty (20) hours in the area of software specific records management training; and three (3) hours of Drug Enforcement Administration ("DEA") narcotics log creation and management; within six (6) months of the date of this Order. All continuing education courses taken by the respondent to fulfill this requirement shall be RACE approved.

Additionally, no continuing education credits completed in compliance with this Consent Order may be used to satisfy the minimum continuing education requirements for any biennial renewal period.

5. Dr. Weiss is hereby assessed costs in the amount of \$3,289.87 incurred by the State in its investigation of this matter. Payment for the costs shall be submitted by certified check or money order made payable to the Board of Veterinary Medical Examiners and submitted to the Board contemporaneously with the signing of this Order. Payment shall be sent to Leslie G. Aronson, Executive Director, at the address listed in paragraph #3 above.

6. In the alternative, the respondent may pay the civil penalty and the costs, totaling \$13,289.87 in equal installments of \$370.00 for a total thirty-five (35) months. The thirty-sixth and final payment will total \$339.87. The first payment shall be paid simultaneously with submission of this Order with subsequent payments due on the fifteenth of each month thereafter until the total amount is paid in full.

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. Further, failure to pay the penalty within the time period allotted above will result in the filing of a Certificate of Debt,

including the applicable interest permitted by the New Jersey Court Rules, and may result in subsequent disciplinary proceedings before the Board for failure to comply with an Order of the Board.

7. Failure to comply with any of the provisions of this Order or remit any and all payments required by this Order will result in the filing of a certificate of debt and 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.

Michel J. Weiss
MICHEL J. WEISS, D.V.M.

DATED: 8/18/09