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New Jersey Office of the Attorney General

Division of Consumer Affairs
State Board of Veterinary Medical Examiners
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VETERINARY MEDICAL EXAMINERS JUNE 11, 2014 SUSSEX ROOM PUBLIC SESSION MINUTES

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A. CALL TO ORDER

This scheduled meeting of the Board will be called to order at 9:30 a.m. in the Sussex Conference Room 6th Floor, 124 Halsey Street, Newark, New Jersey.

	Present	Absent
Board President Logan	(X)	
Board Member Adler		(X)
Board Member Gardner	(X)	
Board Member Giron		(X)
Board Member Rosenberg	(X)	
Board Member Tamassia	(X)	
Board Member Thornton	(X)	
Deputy Attorney General Bradford	(X)	
Isaura Roman, Secretarial Assistant	(X)	
Executive Director Eisenmenger	(X)	

Announcement of quorum.

In accordance with Chapter 231 of P.L. 1975, more commonly referred to as the Sunshine Law, adequate notice of this meeting was provided by mailing to the Office of the Secretary of State, the Newark, Star Ledger, the Trenton Times, the Bergen Record, Atlantic City Press and the Courier Post.

B. APPROVAL OF PUBLIC MINUTES

1. April 30, 2014 Public Minutes

On a motion by Dr. Tamassia, seconded by Rosenberg, the Board approved the minutes as amended. The vote of the Board was unanimous.

C. PUBLIC COMMENT

1. Ms. Pat Scavelli, NJVMA – Inquiry concerning what constitutes adequate patient records in the case of an animal that was presented after death. The Board noted that it

would be prudent for veterinary facilities to include questions in the disposition authorization form(s) to inquire whether the animal has bitten anyone within the previous ten days.

2. Ms. Madeline Kaiser – spoke to the Board concerning the death of her dog in 2007.

3. Joe Breymeier, Esq. – spoke to the Board concerning the State’s formal complaint against his client, Dr. Clinton.

4. Linda Sinick, Esq. – attorney for Ms. Kaiser, spoke to the Board concerning the status of a civil case filed by her client.

D. LEGISLATIVE/REGULATORY

Nothing considered.

E. ADMINISTRATIVE

1. Report by Executive Director, Jonathan Eisenmenger – Mr. Eisenmenger reported that the Spring jurisprudence examinations have been completed.

F. CREDENTIALING

1. Dr. Edgardo Ortiz-Nieves - State Examination. On a motion by Ms. Thornton, seconded by Dr. Tamassia, the Board determined to permit Dr. Ortiz-Nieves to sit for the jurisprudence examination and to obtain a license when all requirements have been met. The vote of the Board was unanimous.

G. CORRESPONDENCE

1. Email from Rich Alampi, NJVMA concerning electronic record keeping. The Board considered the following questions and determined the following responses be given to Mr. Alampi:

a. *Is totally electronic, no paper acceptable?* – Yes.

b. *What are the guidelines for electronic records software?* – The Board’s regulations are silent on the specific question, but the record keeping regulations would govern them. The Board cannot recommend one software provider over any others.

c. *Are there any requirements for the printing of electronic records to provide them to clients? To the BVME?* – The Board requires the same thing, regardless of the mode of the records – a full, complete copy of the records be given to the Board and/or a client upon request.

The Board also noted that it has noticed that the quality of a doctor's notes is much better when contained within handwritten notes, rather than electronic records. Licensees must ensure that essential information is provided in the records, regardless of whether they are paper records or electronic records. Any table side notes are part of the record, and should be included in the patient records that are provided to consumers, and the Board.

2. National Board of Veterinary Medical Examiners - Species Specific Examinations – The Board received this as informational.

3. AAVSB recommendations on Proposed Bylaws Amendments – The Board president directed the executive director to send a letter to the state boards located in states east of the Mississippi River requesting their attention to the bylaws amendment proposed by the NJ State Board.

4. AAVSB memorandum – Activities and Updates for 2014 – The Board received this as informational.

H. PUBLIC ACTION FILED BY THE BOARD

1. Dr. James Clinton - OAL Initial Decision issued April 15, 2014

The Board reviewed the Initial Decision issued April 15, 2014 by Judge Schuster, and responses and exceptions submitted by the Attorney General and Dr. Clinton. On a motion by Ms. Thornton, seconded by Dr. Rosenberg the Board moved into executive session for deliberation and advice of counsel.

After returning to public session, the Board adopted the following motion and resolution:

The Board has reviewed the April 15, 2014 initial decision of the Administrative Law Judge (ALJ) dismissing with prejudice the state's complaint in the matter of the suspension or revocation of the license of James M. Clinton, V.M.D., to practice veterinary medicine in the state of NJ. The ALJ took that action in November 2013 when the state was unable to proceed because its expert would not testify.

Respondent argued that he was prejudiced by the delay and had expended resources to defend the case. The Administrative Law Judge determined, in the absence of any indication that a different expert could be located and the time it would take to render an opinion that respondent had violated veterinary standards, would result in prolonged delay and substantial prejudice to respondent.

Counsel for the State and Dr. Clinton filed exceptions to the Initial Decision. The State has requested that the Board modify the decision to reflect that the complaint be dismissed without prejudice, arguing that any delay in proceeding was not substantial as respondent has been practicing during the processing of the matter, and that the State has the burden of proof. Counsel for Dr. Clinton has argued that the ALJ properly dismissed the matter with prejudice and urged that the Board accept that decision.

After fully deliberating on this matter, the Board has determined to modify the initial decision to reflect that the matter be dismissed without prejudice.

The Board's role is to protect the public health, safety and welfare, and to ensure that its licensees conduct their practices within the standard of care for licensees in this State. The decision by the ALJ – to dismiss with prejudice – deprives the Board of its critical function to evaluate conduct of its licensees. Without a record in this contested case, the Board cannot determine whether there has been a deviation from the standard of care.

That said, the Board is not unmindful of the passage of time and Dr. Clinton's desire to have finality in this matter. As such, the Board will modify the order to reflect dismissal without prejudice, but will direct that the Attorney General re-file its action within forty five (45) days of today. Should the Attorney General not file within that time period, the Board will dismiss the matter on its own motion.

The Initial Decision denying attorney's fees is affirmed.

On a motion by Ms. Thornton, seconded by Dr. Gardner, the Board voted to modify the administrative law judge's initial decision as detailed above. The vote of the Board was four in favor, none against, and one abstention (Dr. Tamassia).

2. Dr. Frank Mitterman - Voluntary Surrender Order filed May 18, 2014. This matter was received as informational.

I. MISCELLANEOUS

1. Article in the Bergen Record concerning an event that occurred at the Ridgely Park Animal Hospital. The Board president directed the executive director to attempt to obtain any additional public information that is available.

J. NEXT MEETING

Next meeting is scheduled for July 30, 2014.

K. EXECUTIVE SESSION

The Board will convene in executive session to hold investigative inquiries and to consider new and pending consumer complaints and disciplinary matters. Immediately subsequent to executive session the Board will return to open session to vote on those matters resulting in disciplinary action.

L. ADJOURNMENT