

BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and First Amended)	
Petition To Revoke Probation Against:)	
) Case No. D1 2012 8
Ryan James Whitney, D.V.M.,)	
) OAH No. 2015070103
Veterinary License No. VET 19719)	
)
Respondent)	

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as by the Veterinary Medical Board, Department of Consumer Affairs, State of California, as its Decision in the above titled matter.

This Decision shall become effective on August 26, 2016

IT IS SO ORDERED July 27, 2016

M. J. ...
 FOR THE VETERINARY MEDICAL BOARD
 DEPARTMENT OF CONSUMER AFFAIRS

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BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and First
Amended Petition to Revoke Probation Against:

RYAN JAMES WHITNEY, D.V.M.,
Veterinarian License No. VET 19719,

Respondent.

Case No. D1 2012 8

OAH No. 2015070103

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on May 18 and 19, 2016, in Los Angeles, California. Complainant was represented by Bora McCutcheon, Deputy Attorney General. Ryan James Whitney, D.V.M. (Respondent) was present and represented himself.

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on May 19, 2016.

FACTUAL FINDINGS

1. On April 23, 2015, Annemarie Del Mugnaio (Complainant) filed a Petition to Revoke Probation while acting in her official capacity as Executive Officer of the Veterinary Medical Board (Board), Department of Consumer Affairs, State of California. On December 28, 2015, Complainant filed the Accusation and First Amended Petition to Revoke Probation while acting in her official capacity. Respondent timely filed a Notice of Defense requesting a hearing.

Licensure and Probation Order

2. On May 17, 2013, the Board issued Veterinarian License Number VET 19719 to Respondent. That veterinarian license is scheduled to expire on January 31, 2017.

3(a). Respondent's application for licensure was initially denied, which he appealed, and a Statement of Issues was filed in Case Number IV 2012 8. However, Respondent entered into a Stipulated Settlement and Disciplinary Order (Stipulation)

resolving that matter. In a Decision and Order (Probation Order), effective March 2, 2013, the Board adopted the Stipulation and ordered that Respondent be issued a veterinarian license, that the license be immediately revoked, that the revocation be stayed, and the license be placed on probation for three years, on specified terms and conditions.

3(b). The Probation Order was based on Respondent's prior citation for, and admission to, practicing unlicensed veterinary medicine at Jansen Animal Hospital in Torrance, California.

3(c). The terms and conditions of Respondent's probation included:

1. **Obey all laws.** Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. . .

2. **Quarterly reports and interviews.** Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation. In addition, the Board at its discretion may request additional in-person reports of the probationary terms and conditions. If the final written quarterly report is not made as directed, the period of probation shall be extended until such time as the final report is received by the Board. Respondent shall make available all patient records, hospital records, books, logs, and other documents to the Board, upon request.

3. **Cooperation with probation surveillance.** Respondent shall comply with the Board's probation surveillance program. All costs for probationary monitoring and/or mandatory premises inspections shall be borne by Respondent. Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. . . .

[¶] . . . [¶]

4. **Ethical training.** Respondent shall take a Board-approved ethical training course(s) for a minimum of twenty (24) [sic] hours during the first year of the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board.

(Exhibit 8.)

Facts re: Feline Patient – Sandy

4. On September 5, 2014, a rescue organization, Furrever Grateful Rescue (FGR) brought a feline patient, Sandy, to Respondent at Primary Care Animal Hospital, located in Long Beach, California (Primary Care). Sandy lived in a warehouse used by FGR, and the rescue group checked on him daily.

5. Respondent's records for Sandy on September 5, 2014, state, "has cancer, eye issue. Pet may need eye enucleation^[1]. . . e/d/u normal. no c/s/v/d."² (Exhibit 17 p. 304.) Sandy's weight was documented as seven pounds. The chart entry for September 5, 2014, does not document a physical examination, diagnosis, prognosis, or treatment plan. There was no documentation that Respondent communicated with FGR regarding the patient's condition. Respondent ordered blood tests. However, he never recommended or performed a biopsy, and he never took a chest x-ray.

6(a). On September 6, 2014, Respondent performed surgery on Sandy at Primary Care. He did not document details of the surgical procedure in the medical records. He also failed to document any physical examination of Sandy within the 12 hours prior to the anesthetic procedure, and the evidence did not establish that such a physical examination was performed.

6(b). Although the medical records did not indicate so, the remainder of the evidence (testimony, emails, and social media postings) established that, in addition to enucleation, Respondent removed a tumor from the left portion of Sandy's face and sutured the wound. However, he did not perform a biopsy of any tissue that was removed.

6(c). There was no documentation in the medical record that Respondent communicated with FGR regarding the patient's condition following the September 6, 2014 surgery.

7. On September 9, 2014, Sandy's medical record indicates that someone called Primary Care to inform them that they would be bringing Sandy in the next day for Respondent "to redo the surgery. Massive infection was found. Face was filled with liquid, was drained." (Exhibit 17, p. 301.) Respondent's chart note for September 10, 2014 indicated, "Consent Form – Surgery. Looks good." (*Id.*) The totality of the evidence indicated that Respondent placed drains for Sandy on that date. However, Respondent did not document details of any treatment or procedure in the medical records. He also failed to document any physical examination of Sandy that day.

8. On September 20, 2014, Sandy was brought back to Respondent for a follow-up appointment. Her weight was documented as 7.78 pounds, and her temperature was 100.02. The chart entry for September 20, 2014, does not document that a physical examination was conducted nor what the diagnosis, prognosis, or treatment plan were.

9. On November 1, 2014, Sandy returned to Respondent for a pre-operative appointment. Her weight was documented at 8.40 pounds, and her temperature was 98.70.

¹ Enucleation is surgical removal of an eye.

² Although not directly established, the totality evidence suggested that "e/d/u" referred to eating, drinking and urinating, and "c/s/v/d" referred coughing, sneezing, vomiting, and diarrhea.

The chart entry for November 1, 2014, does not document that a physical examination was conducted nor what the diagnosis, prognosis, or treatment plan were.

10. On November 9, 2014, Respondent performed a second surgery on Sandy. The medical record contained notations of anesthesia, "consent form – surgery," and "mass removal – small." (Exhibit 17, p. 299.) Respondent did not document details of the surgical procedure in the medical records. He also failed to document any physical examination of Sandy on that date, and the evidence did not establish that such a physical examination was performed.

11. On November 11, 2014, a chart entry by another employee at Primary Care noted that Sandy was "not doing well" and had not eaten. Sandy's weight was documented at 7.5 pounds, and her temperature was 103. An appetite stimulant was provided for home administration. On November 16, 2014, Sandy was seen at Primary Care and received subcutaneous fluids, and went home with fluids, a line and needles for home administration.

12. Emails between Respondent and FGR documented discussions that were not included in Sandy's medical record. On November 9, 2014, FGR sent Respondent an email noting that the "tumor grew back with such alarming force." (Exhibit 18, p. 337.) Regarding the surgery on that date, Respondent wrote, "I got 99% of what was left in there, but it has spread pretty far into the skull area. I'm not sure that even with one more surgery we could get it 'all'." (*Id.*) On November 10, 2014, FGR responded with an email asking several questions about Sandy's prognosis and recommended treatment, including the following: "I'm a little confused by your update! It looks like you got 99% of it but there is more in the skull and third surgery may not be effective in getting it all so that means even with a third procedure it likely will come back? It also sounds like surgery in the eye area is potentially life threatening every time? Guess we need to have a serious discussion about Sandy's long term prospects and what to do." (Exhibit 18, p. 338.) FGR also asked, "At what point do we force feed him and how much? We expect some [lack of appetite] post-surgery but for how long?" (*Id.*) On November 12, 2014, Respondent responded, "My instinct tells me, after I have had time to think about it, is to go back in there in a few weeks. This would be the last attempt of heroics, but we may have a chance to get what's left." (Exhibit 18, p. 339.) In response to FGR's question about Sandy's lack of appetite, Respondent noted, "It was a painful surgery and not wanting to eat is not surprising." (*Id.*) Respondent did not provide any diagnosis or prognosis.

13. Without a biopsy diagnosis and after two painful surgical procedures for an aggressive tumor invading deep into Sandy's face, Respondent recommended a third surgery rather than informing FGR that further surgery was inappropriate for Sandy.

14. On December 20, 2014, Respondent performed a third surgery on Sandy. The medical record from that date indicated "eye surgery." Respondent did not document details of the surgical procedure in the medical records. He also failed to document any physical examination of Sandy on that date, and the evidence did not establish that such a physical examination was performed.

15. On November 13, 2014, and December 26, 2014, Respondent made an entry in the electronic medical record indicating, "Consent Form – Surgery." Additionally, on December 26, 2014, Respondent entered another note, stating, "Patient check-in." However, the evidence did not establish that additional surgeries were performed on these dates.

16. On January 10, 2015, Sandy was seen at Primary Care for suture removal. Respondent noted in the medical record that the "wound is open again." (Exhibit 17, p. 297.)

17. On January 28, 2015, Sandy was brought back to see Respondent. Her weight was documented as 6.60 pounds, and her temperature was 103.10. Respondent's chart entry for that date indicated, "check up. E/D/U very little. no C/V/D some sneezing. . . . palpable mass left submandibular area. also some mass near left whisker. Wait for granulation of eye and make decision." (Exhibit 17, p. 296.) The medical record does not document that a physical examination was conducted nor what the diagnosis, prognosis, or treatment plan were.

18. On February 7, 2015, Sandy was brought back to Respondent for a "recheck." Her weight was documented at 5.90 pounds. Respondent's chart note for that date indicated that Sandy was "loosing [*sic*] weight, the whole [*sic*] was getting bigger, and [owner] has noticed a foul smell; no c/s/v/d. e/d/u normal." (Exhibit 17, p. 296.)

19(a). On February 24, 2015, FGR brought Sandy to Southern California Veterinary Specialty Hospital in Irvine, California to inquire about further surgery. Sandy was evaluated by CZ, D.V.M.,³ a medical oncologist in veterinary medicine. On that date, Dr. CZ noted that Sandy had a large necrotic erosive tumor which had consumed the entire left side of his face, leaving a hole where his missing left eye would have been and extending into his visible nasal and oral cavities. Dr. CZ also noted a left submandibular node, "1.5 x 2.5 cm and firm." (Exhibit 15, p. 274.) She described Sandy as "cachectic."⁴ (*Id.* at p. 271.) Dr. CZ diagnosed Sandy with erosive "squamous cell carcinoma [SCC], left side of face with regional lymph node metastasis, presumptive." (*Id.* at p. 274.) Dr. CZ concluded that Sandy was at the end-stage of cancer and that there was "no effective treatment for the SCC." (*Id.* at p. 275.) She noted that the cat had poor quality of life in that he lived in a warehouse, he seemed to be in pain and suffering, he was losing weight, and "his tumor [had] horrifically deformed him." (*Id.* at p. 275.) Dr. CZ communicated with FGR and strongly recommended euthanasia.

19(b). Dr. CZ recalled that Sandy's owner appeared surprised that nothing else could be done for the cat. FGR declined euthanasia and asked to take the cat home to the warehouse.

³ Initials are used in lieu of the witness's full name in order to protect her privacy.

⁴ Cachexia is malnutrition and deterioration of the body typically associated with severe chronic illness.

20. Dr. CZ was disturbed by how horrible Sandy looked and reported FGR and Respondent to the Board and to the Society for Prevention of Cruelty to Animals in Los Angeles (SPCA-LA).

21(a). On February 26, 2015, Lieutenant Cesar Perea, Humane Officer with the SPCALA, began conducting an investigation into the treatment of Sandy. On that date, he spoke to Respondent, who agreed that due to Sandy's condition, the cat should be euthanized.

21(b). Lt. Perea then contacted FGR, informed them that Dr. CZ and Respondent both recommended euthanasia, and demanded that Sandy be taken to Respondent for examination immediately.

21(c). That evening FGR took Sandy to Respondent and euthanasia was performed. A biopsy was obtained and sent for analysis.

22. The biopsy results indicated a sarcoma with high grade malignancy and high potential for metastasis.

23. On February 26, 2015, Respondent documented his medical record more thoroughly than any of his prior entries. Sandy's weight (5.70 pounds), temperature (101.10), and other vital signs were taken. Respondent noted that Sandy had "deteriorated over the last couple of weeks." (Exhibit 17, p. 294.) Physical examination revealed bilateral enlarged submandibular lymph nodes. In the assessment section of his notes, Respondent stated, "Animal is [bright, alert, and responsive] and eating and drinking which made it difficult for the owners to let go." (*Id.* at p. 295.)

24. On February 28, 2015, Sandy's remains were picked up from Primary Care and taken to Animal Diagnostic Laboratory for necropsy. The necropsy report noted that Sandy's remains were in "very poor nutritional condition with no fat store and muscle loss . . . [and] with prominent vertebral and rib bones." (Exhibit 21, p. 349.) According to the necropsy report:

This cat was suffering from malignant neoplasm (sarcoma) at the open space of left eye with severe local invasion, metastases to regional lymph node (submandibular lymph node) and lungs. This is an advanced case of primary eye neoplasm called primary ocular sarcoma. . . . These neoplasms destroy the globe and have substantial risk of metastasis. Prognosis is very poor.

(*Id.*)

25. On May 15, 2015, Lt. Perea conducted an interview of Respondent. Respondent told Lt. Perea that when Respondent first saw Sandy on September 5, 2014, several veterinary technicians were pleading with him to euthanize the cat. Lt. Perea noted

that Respondent's treatment of Sandy "lacked detail in his reasoning and procedures. [Respondent] said that euthanasia was a better option, but continued to perform surgeries and conduct further treatments. . . . knowing that there was no hope for recovery." (Exhibit 13, p. 254.)

26. On July 29, 2015, Investigator Autumn Holmes, with the Department of Consumer Affairs, Division of Investigation, conducted an interview of Respondent. He told Investigator Holmes that Sandy "was almost dead when [he] first arrived." (Exhibit 14, p. 264.) He admitted performing three surgeries on Sandy: September 5, 2014, to remove the tumor; September 9, 2014, to place a drain in the eye post-operatively; and November 10, 2014, to debulk the tumor.

Negligence and Failure to Properly Maintain Records

27(a). At the administrative hearing, Beth Parvin, D.V.M., testified as an expert for Complainant. Dr. Parvin is a California-licensed veterinarian who has been practicing veterinary medicine, including performing surgeries, for over 35 years. She has been a Board consultant since 2010. Dr. Parvin is qualified to testify as an expert in veterinary medicine. Dr. Parvin's credible testimony established Factual Findings 27(b) through 27(g).⁵

27(b). Except for the February 26, 2015 note, throughout Respondent's medical records for Sandy, there is no documentation that Respondent performed any physical examination of the patient nor is there any description of the patient's condition. The medical records did not document any history, diagnosis, prognosis, treatment plan, description of treatment/procedures performed, or communications with the client. Respondent's recordkeeping was negligent and below the standard of care for veterinary medicine in California.

27(c). Respondent's recordkeeping was also below the standard of care in that it failed to document the minimum information required by the Board's laws and regulations. (Bus. & Prof. Code, § 4855; Cal. Code Regs., tit. 16, § 2032.3.)

27(d). Because there was no documented evidence that Respondent performed any physical examination, Respondent provided treatment to Sandy without establishing a "veterinary-client-patient relationship" (VCPR), which requires, among other things that the veterinarian has become familiar with the patient "by virtue of an examination of the animal" and has communicated with the client a course of treatment appropriate to the circumstance." (Cal. Code Regs., tit. 16, § 2032.1.) This failure to conduct an examination and establish the VCPR was below the standard of care for veterinary medicine in California.

⁵ Dr. Parvin's testimony was corroborated by the observations and opinions of Dr. CZ. However, Dr. CZ's opinions were not considered as independent expert testimony, since Dr. CZ testified as a percipient witness under the protection of anonymity (using only her initials to protect her privacy) in this hearing.

27(e). The standard of care and the Board's regulations require that a veterinarian conduct a physical examination of an animal patient within 12 hours prior to the administration of a general anesthetic. This examination must be documented in the patient's medical records. (Cal. Code Regs., tit. 16, § 2032.4, subd. (b)(1).) Respondent failed to conduct or document physical examinations of Sandy within 12 hours prior to the surgeries performed in September, November and December 2014. This was below the standard of care for veterinary medicine in California and constituted negligence.

27(f). The standard of care for cancer treatment requires that a veterinarian recommend and perform a biopsy of the tumor in order to obtain a definitive diagnosis, which in turn would inform the development of a treatment plan. Additionally, with such an aggressive cancer, the standard of care would involve recommending thoracic x-rays to ascertain possible metastasis. Respondent committed negligence and departed from the standard of care by performing repeated surgery on Sandy for cancer treatment without recommending and performing any biopsy or thoracic x-rays.

27(g). For treatment which is not going to benefit an animal and would likely cause the animal more pain and suffering, the veterinarian has a professional responsibility to recommend euthanasia. If the owner declines and insists on continued surgery and treatment, the veterinarian should refuse to treat the patient and advise the client of the client's right to seek treatment elsewhere. In this case, Sandy's condition was terminal, and Respondent's continued treatment which put the patient through the pain of surgical recovery was below the standard of care. Respondent had a professional responsibility to be honest with the client, to point out that Sandy was declining and suffering, and to inform the client that further surgeries would be futile and would not help the cat. This discussion must be noted in medical record in order to meet the standard of care. Respondent's failure to meet this professional responsibility constituted negligence prior to December 20, 2014. However, Respondent performing additional surgery on Sandy on December 20, 2014 constituted incompetence in the practice of veterinary medicine.

Animal Cruelty

28. By subjecting patient Sandy to unnecessary surgeries, and therefore needless pain and suffering, Respondent negligently committed acts constituting animal cruelty.

Facts re: Probation Violations

29. Failure to Obey all Laws. Condition 1 of Respondent's Probation Order required that Respondent obey all state laws and regulations regarding the practice of veterinary medicine. Respondent violated this condition of his probation in failing to comply with Business and Professions Code section 4883, subdivisions (c) (violation of the Veterinary Practice Act), (i) (negligence and incompetence in the practice of veterinary medicine), (m) (animal cruelty), and (o) (violation of regulations – Cal. Code Regs, tit. 16, §§ 2032.1, 2032.3, and 2032.4).

30. Failure to Submit Quarterly Reports. Condition 2 of Respondent's Probation Order required that Respondent submit quarterly reports to the Board. Respondent violated this condition of his probation by failing to submit quarterly reports to the Board for April, July and October 2015.

31. Failure to Cooperate with Probation Surveillance. Condition 3 of Respondent's Probation Order required that Respondent pay probation monitoring costs at a rate of \$100 per month for the duration of his probation. Respondent violated this condition of his probation by failing to pay probation monitoring costs since March of 2015.

32(a). Alleged Failure to Take Board-Approved Ethical Training Course. Condition 11 of Respondent's Probation order required Respondent to take "a Board-approved ethical training course(s) for a minimum of twenty (24) [*sic*] hours during the first year of the probationary period." This requirement was ambiguous, since it was unclear whether Respondent was required to take twenty or 24 hours of ethics training.

32(b). On March 10, 2014, the Board sent Respondent a letter informing him that it had approved the Ethics Course in which he had enrolled. The letter further stated, "Upon completion, please submit a copy of the certificates of attendance for the above-mentioned course and 22 continuing education hours will be credited towards the required 24 hours of Ethical Training." (Exhibit 10, p. 231.) Respondent completed the Ethics Course for 22 credit hours and provided the certificate of completion to the Board.

32(c). In his testimony, Respondent did not address the ambiguity of Condition 11 or his understanding of the number of required hours. Regardless, Complainant did not establish by a preponderance of the evidence that Respondent failed to comply with Condition 11 of the Probation Order.

Costs of Investigation and Prosecution

33(a). Complainant submitted as evidence of the costs of investigation of this matter an Investigation and Prosecutions Costs Certification (Costs Certification), signed by Annemarie Del Mugnaio, Executive Officer for the Board, certifying that the Board had incurred \$6,498 in investigative costs through May 13, 2016.⁶

33(b). Complainant submitted as evidence of the costs of prosecution of this matter the declaration of the Deputy Attorney General (DAG) assigned to the case, documenting the time billed by the Department of Justice (DOJ), Office of the Attorney General, for this case through May 17, 2016. Attached to the DAG's Declaration were DOJ billing statements,

⁶ This Costs Certification was admitted as a certified copy of the actual costs incurred by the Board, signed by a designated representative of the Board. Pursuant to Business and Professions Code section 125.3, the Costs Certification was considered prima facie evidence of the reasonable costs of investigation and prosecution in this matter.

breaking down the billing by personnel and by time spent on types of tasks. The declaration set forth the following amounts billed:

- (1) Supervising DAG Armando Zambrano
Fiscal year 2015: 1.25 hours @ \$170 (subtotal \$212);
Fiscal year 2014: .25 hours @ \$170 (subtotal 42.50);
- (2) DAG Bora S. McCutcheon:
Fiscal year 2015 (April - May): 60.25 hours @ \$170
(subtotal \$10,242.50);
- (3) Supervising DAG Linda L. Sun
Fiscal year 2015: .75 hours @ \$170 (subtotal \$127.50);
- (4) DAG Nancy A. Kaiser:
Fiscal year 2015 (July 2015-March 2016): 45.75 hours @ \$170
(subtotal \$7,777.50);
Fiscal Year 2014: 8.25 hours @ \$170 per hour (subtotal \$1,402.50)
- (5) Paralegal Jacqueline G. Zamora:
Fiscal year 2015: 1.25 hours @ \$120 (subtotal \$150);
Fiscal year 2014: 2.75 hours @ \$120 (subtotal \$330);
- (6) Total Costs incurred: \$20,285.00.

33(c). Although both DAG Kaiser and DAG McCutcheon both worked on the file in 2016, there were no overlapping dates. Additionally, there was no evidence that any of their work was duplicative.

34. The evidence established that Complainant incurred costs of \$20,285 in the investigation and prosecution of this matter, all of which are deemed reasonable.

Respondent's Testimony

35. Respondent presented as an emotionally unsteady witness, and his demeanor vacillated rapidly between agitation and despair. His testimony and his cross examination of witnesses were generally frenetic and rambling until he would abruptly give up, announcing, "I can't do this." Although Respondent appeared cooperative and candid, given the erratic nature of Respondent's testimony, the reliability of his testimony was diminished.

36. During his testimony, Respondent made several grandiose statements about his professional skills (e.g., "I very ambitiously performed a very beautiful surgery which very few surgeons can do"), without specifically addressing his negligence in continuing to perform surgery on Sandy. Regarding his treatment of Sandy, Respondent admitted that he "should have handled it a lot better." He explained that he is "too people-pleasing."

37. Respondent admitted that he committed "negligence in the paperwork" for Sandy and that there was "no justification for not reaching the standard of care." Nevertheless, Respondent explained that he provides work pro bono for rescue animals, that "some of [those] records are really poor," and that he did "not know if there is a different standard of care for record keeping for a rescue cat [on whom he] did free work." He pointed out that his job was "very hard," that he was "way, way, way too busy" and "too tired," and that if there is going to be "any give in your day, the records are going to give."

38. Respondent did not contest the allegations that he had violated his probation. He admitted that he "should have filled out the forms" to submit his delinquent quarterly reports. However, he explained that he began getting panic attacks and noted, "Every time I fill out the form, I feel like I want to die." Respondent pointed out that he could not even open Complainant's evidence binder at the hearing (which remained unopened in front of him) because he anticipated he would "start crying."

39. Respondent testified that he has not practiced veterinary medicine in eight months. He stated that he has been performing research in molecular biology at a laboratory affiliated with California State University, Long Beach. He wants to retain his veterinarian license because he would like to continue working at the laboratory and also "take care of cats around the neighborhood." He could not fathom that his license would be revoked "because [he] got lazy on some records."

LEGAL CONCLUSIONS

Accusation – Causes for Discipline

1. Cause exists to revoke or suspend Respondent's Veterinarian License, pursuant to Business and Professions Code section 4883, subdivisions (i) and (o), in conjunction with California Code of Regulations, title 16, section 2032, in that Respondent committed acts of negligence and incompetence in his treatment of feline patient Sandy, as set forth in Factual Findings 4 through 27.

2. Cause exists to revoke or suspend Respondent's Veterinarian License, pursuant to Business and Professions Code sections 4883, subdivisions (c) and (o), in conjunction with Business and Professions Code section 4855, and California Code of Regulations, title 16, sections 2032.3, subdivision (a), and 2032.4, in that Respondent failed to keep proper records for feline patient Sandy, based on Factual Findings 4 through 27.

3. Cause exists to revoke or suspend Respondent's Veterinarian License, pursuant to Business and Professions Code section 4883, subdivision (o), in that Respondent violated California Code of Regulations, title 16, sections 2032.1 (by failing to establish a VCPR prior to treatment) and 2032.4, subdivision (b)(1) (by failing to perform a physical examination within 12 hours prior to surgeries), as set forth in Factual Findings 4 through 27.

4. Cause exists to revoke or suspend Respondent's Veterinarian License, pursuant to Business and Professions Code sections 4883, subdivision (m), in that Respondent negligently committed acts constituting animal cruelty, as set forth in Factual Findings 4 through 28.

5. Cause exists to revoke or suspend Respondent's Veterinarian License, pursuant to Business and Professions Code section 4883, subdivision (c), in that Respondent violated Business and Professions Code section 4855 (by failing to include in his records the minimum amount of information required by the Board), as set forth in Factual Findings 4 through 27.

Petition to Revoke Probation

6. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 1 of his probation, in that Respondent failed to obey all laws, as set forth in Factual Findings 3 through 28, 29, 38, and Legal Conclusions 1 through 5.

7. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 2 of his probation, in that Respondent failed to submit quarterly reports, as set forth in Factual Findings 3, 30, and 38.

8. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 3 of his probation, in that Respondent failed to pay probationary monitoring costs, as set forth in Factual Findings 3 and 31.

9. Cause does not exist to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 4 of his probation, because Complainant did not establish that Respondent violated that condition of his probation, as set forth in Factual Findings 3 and 32.

Costs

10. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of \$20,285, as set forth in Factual Findings 33 and 34.

Disposition

11. Respondent has a history of flouting the Board's laws and regulations, beginning prior to his licensure with his admitted practice of unlicensed veterinary medicine. Despite this violation, the Board afforded Respondent an opportunity to establish his

rehabilitation and issued him a license with a three-year probationary period. However, instead of establishing any rehabilitation through a good work history and compliance with his probation, Respondent committed violations of the laws and regulations governing the practice of veterinary medicine, and he knowingly refused to comply with several probationary conditions. Respondent's explanations for his violations (e.g., he was too tired and too busy to keep proper medical records) and for his failure to meet his probationary conditions (e.g., he was emotionally unable to fill out the reports) point to a fundamental inability to acknowledge and meet his responsibility as a veterinarian and probationer. This bodes very poorly for his compliance during continued probation and thereafter as an unsupervised licensee. Respondent provided no evidence of rehabilitation and current fitness to practice veterinary medicine in compliance with the applicable laws and regulations. Consequently, revocation of Respondent's veterinarian license is necessary to protect the public health, safety and welfare.

ORDER

1. Veterinarian License Number VET 19719, issued to Respondent Ryan James Whitney, D.V.M., is hereby revoked.

2. If Respondent later applies for a new veterinarian license or reinstatement of his revoked license, Respondent shall reimburse the Board \$20,285.00 for its investigative and prosecutorial costs in this case prior to reinstatement or issuance of any veterinarian license or as the Board in its discretion may otherwise order.

DATED: May 27, 2016

DocuSigned by:
Julie Cabos-Owen
18236F95DE98452...

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
9 **VETERINARY MEDICAL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and First
12 Amended Petition to Revoke Probation
Against:

Case No. D1 2012 8

**ACCUSATION AND FIRST AMENDED
PETITION TO REVOKE PROBATION**

13 **RYAN JAMES WHITNEY**
14 **16515 Tropez Lane**
Huntington Beach, CA 92649

15 **Veterinarian License No. VET 19719**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Annemarie Del Mugnaio (Complainant) brings this this Accusation and First
21 Amended Petition to Revoke Probation solely in her official capacity as the Executive Officer of
22 the Veterinary Medical Board, Department of Consumer Affairs.

23 2. On or about May 17, 2013, the Veterinary Medical Board issued Veterinarian
24 License Number VET 19719 to Ryan James Whitney (Respondent). The Veterinarian License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 January 31, 2017, unless renewed.

27 3. In a disciplinary action entitled *In the Matter of the Statement of Issues against Ryan*
28 *James Whitney*, Case No. IV 2012 8, the Veterinary Medical Board, issued a decision, effective

1 March 2, 2013, in which Respondent was issued a Veterinarian License that was immediately
2 revoked. However, the revocation was stayed and Respondent's Veterinarian License was
3 placed on probation for a period of three (3) years with certain terms and conditions. A copy of
4 that decision is attached as Exhibit A and is incorporated by reference.

5 **JURISDICTION FOR ACCUSATION**

6 4. This Accusation is brought before the Veterinary Medical Board (Board),
7 Department of Consumer Affairs, under the authority of the following laws. All section
8 references are to the Business and Professions Code ("Code") unless otherwise indicated.

9 5. Section 4875 of the Code provides, in pertinent part, that the Board may revoke or
10 suspend the license of any person to practice veterinary medicine, or any branch thereof, in this
11 state for any causes provided in the Veterinary Medicine Practice Act (Bus. & Prof. Code, §
12 4800, et seq.). In addition, the Board has the authority to assess a fine not in excess of \$5,000
13 against a licensee for any of the causes specified in section 4883 of that code. Such fine may be
14 assessed in lieu of, or in addition to, a suspension or revocation.

15 6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
16 expiration of a license shall not deprive a board of jurisdiction to proceed with a disciplinary
17 action during the period within which the license may be renewed, restored, reissued or
18 reinstated. Under Section 4843.5 of the Code, the Board may renew an expired license at any
19 time within five years after the expiration.

20 7. Section 4883 of the Code states, in part:

21 "The board may deny, revoke, or suspend a license or assess a fine as
22 provided in Section 4875 for any of the following:

23 "...
24 "(c) Violation or attempting to violate, directly or indirectly, any of the
25 provisions of this chapter [the Veterinary Medicine Practice Act].

26 "...
27 "(g) Unprofessional conduct,

28 "...
29 "(i) Fraud, deception, negligence, or incompetence in the practice of
30 veterinary medicine.

31 "...
32 "(m) Cruelty to animals, conviction on a charge of cruelty to animals, or
33 both.

1 (o) Violation, or the assisting or abetting violation, of any regulations
2 adopted by the board pursuant to this chapter [the Veterinary Medicine Practice
3 Act].

4 8. Section 4855 of the Code, states:

5 "A veterinarian subject to the provisions of this chapter shall, as required by
6 regulation of the board, keep a written record of all animals receiving veterinary
7 services, and provide a summary of that record to the owner of animals receiving
8 veterinary services, when requested. The minimum amount of information which
9 shall be included in written records and summaries shall be established by the
board. The minimum duration of time for which a licensed premise shall retain the
written record or a complete copy of the written record shall be determined by the
board."

10 9. Section 4856, subdivision (a), of the Code states:

11 "All records required by law to be kept by a veterinarian subject to this chapter,
12 including, but not limited to, records pertaining to diagnosis and treatment of
13 animals and records pertaining to drugs or devices for use on animals, shall be
open to inspection by the board, or its authorized representatives, during an
inspection as part of a regular inspection program by the board, or during an
14 investigation initiated in response to a complaint that a licensee has violated any
law or regulation that constitutes grounds for disciplinary action by the board. A
15 copy of all those records shall be provided to the board immediately upon request."

16 REGULATORY PROVISIONS

17 10. California Code of Regulations, title 16, section 2032, states:

18 "The delivery of veterinary care shall be provided in a competent and
19 humane manner. All aspects of veterinary medicine shall be performed in a manner
consistent with current veterinary medical practice in this state."

20 11. California Code of Regulations, title 16, section 2032.1, states, in part, that:

21 "(a) It is unprofessional conduct for a veterinarian to administer, prescribe,
22 dispense or furnish a drug, medicine, appliance, or treatment of whatever nature
23 for the prevention, cure, or relief of a wound, fracture or bodily injury or disease of
an animal without having first established a veterinarian-client-patient relationship
24 with the animal patient or patients and the client, except where the patient is a wild
animal or the owner is unknown.

25 "(b) A veterinarian-client-patient relationship shall be established by the
26 following:

27 (1) The client has authorized the veterinarian to assume responsibility
for making medical judgments regarding the health of the animal, including the
28 need for medical treatment,

1 (2) The veterinarian has sufficient knowledge of the animal(s) to
2 initiate at least a general or preliminary diagnosis of the medical condition of the
3 animal(s). This means that the veterinarian is personally acquainted with the care
4 of the animal(s) by virtue of an examination of the animal or by medically
5 appropriate and timely visits to the premises where the animals are kept, and

6 (3) The veterinarian has assumed responsibility for making medical
7 judgments regarding the health of the animal and has communicated with the client
8 a course of treatment appropriate to the circumstance.”

9 12. California Code of Regulations, title 16, section 2032.3, states, in part, that:

10 “(a) Every veterinarian performing any act requiring a license pursuant to
11 the provisions of Chapter 11, Division 2, of the code, upon any animal or group of
12 animals shall prepare a legible, written or computer generated record concerning
13 the animal or animals which shall contain the following information:

14 (1) Name or initials of the person responsible for entries.

15 (2) Name, address and phone number of the client.

16 (3) Name or identity of the animal, herd or flock.

17 (4) Except for herds or flocks, age, sex, breed, species, and color of the
18 animal.

19 (5) Dates (beginning and ending) of custody of the animal, if
20 applicable.

21 (6) A history or pertinent information as it pertains to each animal,
22 herd, or flock's medical status.

23 (7) Data, including that obtained by instrumentation, from the physical
24 examination.

25 (8) Treatment and intended treatment plan, including medications,
26 dosages, route of administration, and frequency of use.

27 (9) Records for surgical procedures shall include a description of the
28 procedure, the name of the surgeon, the type of sedative/anesthetic agents used,
their route of administration, and their strength if available in more than one
strength.

(10) Diagnosis or assessment prior to performing a treatment or
procedure.

(11) If relevant, a prognosis of the animal's condition.

(12) All medications and treatments prescribed and dispensed,
including strength, dosage, route of administration, quantity, and frequency of use.

(13) Daily progress, if relevant, and disposition of the case.

(b) Records shall be maintained for a minimum of three (3) years after the
animal's last visit. A summary of an animal's medical records shall be made
available to the client within five (5) days or sooner, depending if the animal is in
critical condition, upon his or her request. The summary shall include:

(1) Name and address of client and animal.

(2) Age, sex, breed, species, and color of the animal.

(3) A history or pertinent information as it pertains to each animal's
medical status.

(4) Data, including that obtained by instrumentation, from the physical
examination.

1 (5) Treatment and intended treatment plan, including medications, their
dosage and frequency of use.

2 (6) All medications and treatments prescribed and dispensed, including
strength, dosage, route of administration, quantity, and frequency of use.

3 (7) Daily progress, if relevant, and disposition of the case.

4 13. California Code of Regulations, title 16, section 2032.4, states, in part:

5 “(b) When administering general anesthesia, a veterinarian shall comply
with the following standards:

6 (1) Within twelve (12) hours prior to the administration of a general
7 anesthetic, the animal patient shall be given a physical examination by a licensed
veterinarian appropriate for the procedure. The results of the physical examination
8 shall be documented in the animal patient's medical records.”

9 ACCUSATION

10 FACTUAL SUMMARY

11 14. On or about February 27, 2015, C.Z, a veterinarian who specializes in oncology,
12 submitted a complaint to the Board regarding the veterinary care provided by Respondent to
13 animal patient Sandy. In her complaint, C.Z., reported her concerns regarding Sandy, a cat
14 presented to her by the rescue organization, Furrever Grateful Rescue (FGR). C.Z. described the
15 case as "horrible," stating the cat had an erosive tumor that had eaten away the entire left side of
16 his face, with the left eye and part of the nose and mouth missing; "the worst case" that C.Z. had
17 ever seen. FGR kept Sandy in a cage in a warehouse and checked on him twice daily. C.Z.
18 expressed concern that the cat had been under the veterinary care of Respondent, and that the
19 records indicated that Respondent suspected cancer, but still continued to "cut" and not refer/call
20 for opinions. C.Z. stated the rescue group was not realistic and the surgery performed on the cat
21 was inappropriate. She stated she strongly recommended euthanasia, but it was refused by FGR.
22 Photographs of Sandy's face were provided with her complaint. The Board's investigation
23 revealed the following.

24 15. On or about September 5, 2014, FGR presented Sandy to Respondent at Primary
25 Care Animal Hospital, located in Long Beach, California, for "...cancer, eye issue." Respondent
26 did not perform and/or document a basic physical examination of Sandy. Without performing a
27 physical exam of the patient and communicating with the client regarding the patient's condition,
28 Respondent did not establish a Veterinarian-Client-Patient-Relationship. Respondent took blood

1 tests, but did not perform or recommend a biopsy, nor did he take a chest radiograph. When
2 cancer is suspected, chest radiographs taken prior to surgery is the standard of care. If metastatic
3 spread is documented on radiographs, performing surgery would be unreasonable. Respondent
4 did not document a tentative diagnosis or a diagnosis in the record. In addition, in any case with
5 evidence of neoplasia, performing a biopsy is the standard of care. Without a biopsy, it is
6 impossible to know with any certainty the type of cancer or provide the client with an informed
7 prognosis. Respondent continued to put Sandy through months of treatment and multiple
8 surgeries without a definitive diagnosis.

9 16. On or about September 6, 2014, Respondent performed surgery on Sandy at Primary
10 Care Animal Hospital. Respondent did not perform a physical examination of Sandy within 12
11 hours of the anesthetic procedure. Respondent did not document details of the surgical
12 procedure in the medical records. On September 9, 2014, FGR brought Sandy back to
13 Respondent. The medical record notations state that Sandy's face was filled with liquid, which
14 was drained, and that he will be brought in to "redo the surgery" due to "massive infection."

15 17. During the period that Respondent was treating Sandy, FGR posted gruesome
16 photographs of Sandy before and after surgery on Facebook along with requests for donations
17 for his veterinary care. FGR's photographs of Sandy on Facebook dated September 8, 2014,
18 September 9, 2014, and September 11, 2014, show post-surgical pictures of Sandy with a large
19 sutured area extending from the middle of his nose to below the left ear. These pictures
20 document that Respondent closed the skin over the erosive cancerous defect. The probability that
21 closing skin over a large eroding cancerous lesion will be of any benefit is extremely unlikely.
22 The area was sutured several times, and each time tissue breakdown occurred. Thus, Respondent
23 performed unnecessary cosmetic surgical procedures on a cat with a large aggressive, cancerous
24 facial defect.

25 18. On November 9, 2014, Respondent performed a second surgery on Sandy. An
26 anesthetic procedure and a "mass removal - small" is noted in medical record. No evaluation,
27 treatment or surgical procedure was documented in the medical record. On November 11, 2014,
28

1 Sandy is noted as "not doing well" and not eating. He received subcutaneous¹ fluids and an
2 appetite stimulant for home administration. On November 16, 2014, Sandy was seen at Primary
3 Care Animal Hospital for a re-check of the incision site. Subcutaneous fluids were dispensed for
4 home administration.

5 19. Emails between Respondent and FGR document discussions that are not included in
6 the medical record. Regarding the second surgery on November 9, 2014, Respondent writes, "I
7 got 99% of what was left in there, but it has spread pretty far into the skull area." On November
8 10, 2014, FGR responds, "Guess we need to have a serious discussion about Sandy's long term
9 prospects and what to do." On November 12, 2014, Respondent responds "my instinct tells me .
10 . to go back in there (surgically) in a few weeks . . . we may have a chance to get what's left."
11 Without a biopsy diagnosis and after two painful surgical procedures and ongoing treatment for
12 an aggressive tumor invading deep into Sandy's face, Respondent recommended a third surgery
13 instead of informing FGR that further surgery was inappropriate for Sandy.

14 20. On December 20, 2014, Respondent performed a third surgery on Sandy. "Eye
15 surgery" is noted in the medical record. No evaluation, treatment, surgical procedure or
16 anesthetic protocol was documented in the medical record.

17 21. On December 26, 2014, Respondent appears to have performed a fourth surgery on
18 Sandy. No evaluation, treatment, surgical procedure or anesthetic protocol was documented in
19 the medical record. On January 10, 2015, Sandy was seen at Primary Care Animal Hospital for
20 suture removal; the wound is described as "open again."

21 22. On January 28, 2015, Sandy was brought back to see Respondent. Sandy is noted to
22 be eating, drinking and urinating very little. A "palpable mass left submandibular area . . . also
23 some mass near left whisker" is noted in Sandy's medical record. There is no indication that
24 Respondent was concerned that this "mass" was likely an enlarged lymph node, and there is no
25 mention of metastasis in the record. Respondent did not perform a simple fine needle aspiration
26 of the enlarged lymph node, which would have revealed valuable diagnostic information.

27 _____
28 ¹ Under the skin.

1 23. On February 24, 2015, Sandy was evaluated by C.Z. at Southern California
2 Veterinary Specialty Hospital in Irvine, California. In the medical record, C.Z. describes
3 Sandy's lesion as encompassing the entire left side of the face with the left eye missing and the
4 nasal and oral cavity visible through the lesion. Sandy is described as cachectic with an enlarged
5 firm left submandibular² lymph node and markedly thickened intestines found on palpation.
6 C.Z.'s tentative diagnosis was squamous cell carcinoma along with intestinal disease. She adds
7 that the tumor had horribly deformed Sandy's face and there is no effective treatment. After
8 FGR refused euthanasia, C.Z. administered palliative treatment only.

9 24. On or about February 26, 2015, the Los Angeles SPCA received an email with
10 C.Z.'s complaint and photographs of Sandy. The Los Angeles SPCA contacted FGR,
11 demanding Sandy be taken to a veterinary facility for euthanasia. On February 26, 2015, FGR
12 brought Sandy to Primary Care Animal Hospital for euthanasia. Euthanasia was performed, and
13 a punch biopsy was sent to a pathologist. The biopsy results document that Sandy had an
14 advanced aggressive sarcoma.

15 25. On February 26, 2015, Respondent documented that Sandy had deteriorated over the
16 last couple of weeks. Physical exam notes bilaterally enlarged submandibular lymph nodes. In
17 the medical record assessment, Respondent states "Animal is BAR³ and eating and drinking
18 which made it difficult for the owner's to let go." This statement is deceptive leading one to
19 believe Sandy was doing well, when he was not. Sandy was on an appetite stimulant and was
20 losing weight, which was documented in the medical record. Also, two days prior to euthanasia,
21 C.Z. had described Sandy as cachectic⁴, which is consistent with the description of Sandy in the
22 necropsy report.

23 26. On February 28, 2015, Sandy's remains were picked up from Primary Care Animal
24 Hospital and taken to Animal Diagnostic Laboratory for necropsy. The necropsy report noted
25 that Sandy's remains were in very poor nutritional condition with no fat store and muscle loss.

26
27 ² Situated in the region below the lower jaw.

³ "Bright Alert and Responsive".

⁴ General physical wasting and malnutrition usually associated with chronic disease.

1 The necropsy stated that Sandy was suffering from a malignant sarcoma⁵ at the left eye with
2 severe local invasion and metastasis to the submandibular lymph node and lungs.

3 27. During SPCA's investigation, Respondent told the investigator that FGR was not
4 agreeable to euthanasia so he continued performing procedures and treatment knowing there was
5 no hope of recovery for Sandy. Despite the fact that Respondent knew there was no hope that
6 Sandy would survive, he supported the unrealistic expectations of FGR. Respondent failed to
7 communicate honestly with FGR regarding the fact that Sandy's condition was terminal and
8 treatment was not only useless, but also debilitating and painful.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Negligence, Incompetence or Deception)**

11 28. Respondent is subject to disciplinary action under section 4883, subdivisions (i) and
12 (o), in conjunction with California Code of Regulations, title 16, section 2032, in that
13 Respondent committed negligence, incompetence, and/or deception in his duties as a
14 veterinarian. Specifically, with regard to his care and treatment of animal patient Sandy,
15 Respondent:

- 16 a) Put Sandy through months of treatment and multiple surgeries for cancer without
17 performing or even recommending a biopsy to obtain a definitive diagnosis;
- 18 b) Failed to recommend chest radiographs, prior to surgery for an aggressive cancer;
- 19 c) Failed to perform or recommend a fine needle aspirate of an enlarged submandibular
20 lymph node in a patient with aggressive facial cancer;
- 21 d) Recommended a third surgery for inoperable cancer after two painful surgical
22 procedures for a painful aggressive tumor and without a biopsy diagnosis;
- 23 e) Performed unnecessary cosmetic surgical procedures on a cat with a large, erosive
24 facial cancer;
- 25 f) Failed to document a description of four surgical "tumor removals" performed on
26 September 6, 2014, November 9, 2014, December 20, 2014, and December 26, 2014;

27 _____
28 ⁵ A malignant tumor.

1 g) Failed in his professional responsibility to refuse treatment and inform the client that
2 treatment of an extensive, aggressive cancer is futile;

3 h) Encouraged continued treatment, enabling fundraising by FGR to pay for
4 unnecessary surgery and medical services provided by his practice, despite his knowledge that
5 treatment of Sandy was hopeless;

6 i) Included deceptive information in the medical record regarding the condition of an
7 animal patient suffering from advanced cancer on February 26, 2015.

8 j) Failed to document the minimum information required by the Board in his medical
9 record for Sandy, from September 5, 2014 to February 26, 2015.

10 Complainant refers to and by this reference incorporates, the allegations set forth above in
11 paragraphs 14 through 27, inclusive, as though set forth fully herein.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Proper Record Keeping)**

14 29. Respondent is subject to disciplinary action under sections 4883, subdivisions (c)
15 and (o), of the Code, in conjunction with Sections 4855, and 4856, subdivision (a), California
16 Code of Regulations, title 16, sections 2032.3, subdivisions (a)(7), (9), (10), and (13) and 2032.4,
17 subdivision (b)(1), in that, with regard to the care and treatment of animal patient Sandy,

18 Respondent:

19 a) Failed to document a physical examination of Sandy on September 5, 2014 in the
20 patient's medical record, in violation of California Code of Regulations, title 16, section
21 2032.3(a)(7);

22 b) Failed to document a tentative diagnosis in the patient's medical record on
23 September 5, 2015, in violation of California Code of Regulations, title 16, section
24 2032.3(a)(10);

25 c) Failed to document a diagnosis in the patient's medical record on September 5,
26 2014, in violation of California Code of Regulations, title 16, section 2032.3(a)(13);

27 d) Failed to document in the patient's medical record a description of the surgical
28 procedures performed on September 6, 2014, November 9, 2014, December 20, 2014 and

1 December 26, 2014, in violation of California Code of Regulations, title 16, section
2 2032.3(a)(9);

3 e) Failed to document in the patient's medical record information regarding the
4 anesthesia protocol used for surgical procedures performed on December 20, 2014, and
5 December 26, 2014, in violation of California Code of Regulations, title 16, section
6 2032.3(a)(9);

7 f) Failed to document the minimum information required by the Board in Sandy's
8 medical records, in violation of Section 4855.

9 Complainant refers to and by this reference incorporates, the allegations set forth above in
10 paragraphs 14 through 28, inclusive, as though set forth fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of the Regulations)**

13 30. Respondent is subject to disciplinary action under section 4883, subdivision (o), of
14 the Code, in conjunction with California Code of Regulations, title 16, section 2032.1, as
15 follows:

16 a) From September 5, 2014 until February 26, 2015, Respondent treated animal patient
17 Sandy without establishing a Veterinarian-Client-Patient-Relationship.

18 b) Despite his knowledge to the contrary, Respondent supported a client's unrealistic
19 expectations, performing surgery and failing to inform the client that treatment was useless,
20 causing pain and suffering to the patient.

21 Complainant refers to and by this reference incorporates, the allegations set forth above in
22 paragraphs 14 through 29, inclusive, as though set forth fully herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Animal Cruelty)**

25 31. Respondent is subject to disciplinary action under section 4883, subdivision (m), of
26 the Code, in that he committed acts constituting animal cruelty. Specifically, from September 5,
27 2014, until euthanasia on February 26, 2015, by failing to perform his professional duties,
28 Respondent subjected patient animal Sandy to needless suffering from a painful aggressive

1 tumor and needless surgeries. Complainant refers to and by this reference incorporates, the
2 allegations set forth above in paragraphs 14 through 30, inclusive, as though set forth fully
3 herein.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Violation of the Act)**

6 32. Respondent is subject to disciplinary action under section 4883, subdivisions (c) and
7 (o), of the Code, as follows:

8 a) From September 5, 2014 until February 26, 2015, Respondent failed to establish a
9 Veterinarian-Client-Patient-Relationship with animal patient Sandy, in violation of California
10 Code of Regulations, title 16, section 2032.1, subdivision (b).

11 b) Respondent failed to perform a physical exam of animal patient Sandy within 12
12 hours of anesthetic procedures performed on September 6, 2014, November 9, 2014, December
13 20, 2014, and December 26, 2014, in violation of California Code of Regulations, title 16,
14 section 2032.4, subdivision (b)(1);

15 c) Respondent's medical record for Sandy, from September 5, 2014 until February 26,
16 2015, fails to document the minimum information required by the Board in violation of section
17 4855 of the Code.

18 Complainant refers to and by this reference incorporates, the allegations set forth above in
19 paragraphs 14 through 31, inclusive, as though set forth fully herein.

20 **JURISDICTION FOR FIRST AMENDED PETITION TO REVOKE PROBATION**

21 33. This First Amended Petition to Revoke Probation is brought before the Board under
22 the authority of the Board's Decision and Order *In the Matter of the Statement of Issues against:*
23 *Ryan James Whitney*, Case No. IV 2012 8.

24 34. Condition 9 of the Decision and Order *In the Matter of the Statement of Issues*
25 *against Ryan James Whitney*, Case No. IV 2012 8, entitled "Violation of Probation," states:

26 If Respondent violates probation in any respect, the Board, after giving
27 Respondent notice and the opportunity to be heard, may revoke probation and
28 carry out the disciplinary order that was stayed. If a Statement of Issues or petition
to revoke probation is filed against Respondent during probation, or if the

1 Attorney General's office has been requested to prepare any disciplinary action
2 against Respondent's license, the Board shall have continuing jurisdiction until the
3 matter is final, and the period of probation shall be extended until the matter is
4 final.

5 35. Grounds exist to revoke Respondent's probation under the authority of Condition 9
6 of the Decision and Order *In the Matter of the Statement of Issues against Ryan James Whitney*,
7 Case No. IV 2012 8. Respondent did not comply with the terms and conditions of his probation,
8 as more particularly set forth below.

9 **GROUND FOR REVOKING PROBATION**

10 36. Grounds exist for revoking probation and reimposing the order of revocation of
11 Respondent's license in that he failed to comply with the following probation conditions:

12 **FIRST CAUSE TO REVOKE PROBATION**

13 **(Failure to Obey All Laws)**

14 37. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition 1 (Obey All Laws), in that he failed to obey all laws, in that he violated
16 Sections 4883, subdivisions (c), (i), (m), and (o), as set forth in paragraphs 14 through 32, above.

17 **SECOND CAUSE TO REVOKE PROBATION**

18 **(Failure to Submit Quarterly Reports and Interviews)**

19 38. At all times during probation, Respondent was subject to the following condition:

20 (2) QUARTERLY REPORTS AND INTERVIEWS. Respondent shall
21 report quarterly to the Board or its designee, under penalty of perjury, on forms
22 provided by the Board, stating whether there has been compliance with all
23 terms and conditions of probation. In addition, the Board at its discretion may
24 request additional in-person reports of the probationary terms and conditions. If
25 the final written quarterly report is not made as directed, the period of
26 probation shall be extended until such time as the final report is received by the
27 Board. Respondent shall make available all patient records, hospital records,
28 books, logs, and other documents to the Board, upon request.

39. Respondent's probation is subject to revocation, because he failed to complete the
following Quarterly Reports in a timely manner:

///

///

	<u>Report Due Date</u>	<u>Date Received</u>
1		
2	April 5, 2013	June 4, 2014
3	July 5, 2013	February 28, 2014
4	October 5, 2013	February 28, 2014
5	January 5, 2014	February 28, 2014
6	April 5, 2014	February 6, 2015
7	July 5, 2014	February 6, 2015
8	October 5, 2014	February 6, 2015
9	January 5, 2015	February 6, 2015
10	April 2015	Not received
11	July 2015	Not received
12	October 2015	Not received

THIRD CAUSE TO REVOKE PROBATION

(Failure to Cooperate with Probation Surveillance)

40. At all times during probation, Respondent was subject to the following condition:

(3) COOPERATION WITH PROBATION SURVEILLANCE.

Respondent shall comply with the Board's probation surveillance program. All costs for probationary monitoring and/or mandatory premises inspections shall be borne by Respondent. Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. Respondent shall notify the Board of any change of name or address within 30 days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.

41. Respondent's probation is subject to revocation, because he failed to cooperate with probation surveillance. On or about January 14, 2015, Respondent was put on notice of this condition and was directed to pay monthly payments for the remainder of his probation. From March 2015 to the date of filing, Respondent has failed to pay the probation monitoring costs.

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///

///

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Take a Board-Approved Ethical Training Course(s))

42. At all times during probation, Respondent was subject to the following condition:

(11) ETHICAL TRAINING. Respondent shall take a Board-approved ethical training course(s) for a minimum of twenty (24) hours during the first year of the probationary period. Upon successful completion of the course, Respondent shall provide proof to the Board.

43. Respondent is subject to revocation, because he failed to take a Board-approved ethical training course. On or about March 10, 2014, the Board approved an ethics course, which would have met 22 of the 24 hours necessary to successfully complete this condition. Said correspondence stated that upon completion of the course, Respondent must submit a copy of the certificate of completion to receive credit. In 2015, the Board received a certificate of completion of the course, which leaves two hours outstanding for this term.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Veterinary Medical Board issue a decision:

1. Revoking the probation that was granted by the Veterinary Medical Board in Case No. IV 2012 8 and imposing the disciplinary order that was stayed thereby revoking Veterinarian License No. VET 19719 issued to Ryan James Whitney;

2. Revoking or suspending Veterinarian License No. VET 19719, issued to Ryan James Whitney;

3. Assessing a fine against Ryan James Whitney not in excess of \$5,000 for any of the causes specified in Business and Professions Code section 4883;

4. Section 125.3 of the Code provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case; and

5. Taking such other and further action as deemed necessary and proper.

DATED: December 28, 2015


ANNEMARIE DEL MUGNAIO

Executive Officer
Veterinary Medical Board
Department of Consumer Affairs
State of California
Complainant

LA2015500294
51717865_8.doc

Exhibit A

Decision and Order

In the Matter of the Statement of Issues Against: Ryan James Whitney, Case No. IV 2012 8

BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:)

RYAN JAMES WHITNEY)

Applicant for Veterinarian License)
Long Beach, CA 90814)

Respondent.)

) Case No. IV 2012 8

) OAH No. 2012040447

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Veterinary Medical Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 2, 2013.

IT IS SO ORDERED January 31, 2013.

Tom Kendall DVM

Tom Kendall, DVM, Board President
FOR THE VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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2 KAREN B. CHAPPELLE
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7 *Attorneys for Complainant*

8
9 BEFORE THE
10 VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA.

12 In the Matter of the Statement of Issues
13 Against:

14 RYAN JAMES WHITNEY

15 Applicant for Veterinarian License

16 Respondent.

Case No. IV 2012 8

OAH No. 2012040447

17
18 **STIPULATED SETTLEMENT AND
19 DISCIPLINARY ORDER**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Veterinary Medical Board, the parties hereby agree to the
22 following Stipulated Settlement and Disciplinary Order, which will be submitted to the Board for
23 approval and adoption as the final disposition of the Statement of Issues.

24 PARTIES

25 1. Susan M. Geranen (Complainant) is the Executive Officer of the Veterinary Medical
26 Board. She brought this action solely in her official capacity and is represented in this matter by
27 Kamala D. Harris, Attorney General of the State of California, by Nancy A. Kaiser, Deputy
28 Attorney General.

1 2. Respondent Ryan James Whitney (Respondent) is represented in this proceeding by
2 attorney John Paul Dratz, Jr., whose address is: 3278 Wilshire Blvd., Apt 201, Los Angeles, CA
3 90010.

4 3. On or about December 17, 2010, Respondent filed an application, dated December
5 14, 2010, with the Veterinary Medical Board to obtain a Veterinarian License. The Board denied
6 the application on August 30, 2011.

7 JURISDICTION

8 4. Statement of Issues No. IV 2012 8 was filed before the Veterinary Medical Board
9 (Board), and is currently pending against Respondent. The Statement of Issues and all other
10 statutorily required documents were properly served on Respondent on January 13, 2012.

11 5. A copy of Statement of Issues No. IV 2012 8 is attached as exhibit A and
12 incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Statement of Issues No. IV 2012 8. Respondent has also carefully
16 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
17 Disciplinary Order.

18 7. Respondent is fully aware of his legal rights in this matter, including the right to a
19 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
20 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
21 the right to present evidence and to testify on his own behalf; the right to the issuance of
22 subpoenas to compel the attendance of witnesses and the production of documents; the right to
23 reconsideration and court review of an adverse decision; and all other rights accorded by the
24 California Administrative Procedure Act and other applicable laws.

25 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Statement of
3 Issues No. IV 2012 8.

4 10. Respondent agrees that his Application for a Veterinarian License is subject to denial
5 and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Board. Respondent understands
9 and agrees that counsel for Complainant and the staff of the Board may communicate directly
10 with the Board regarding this stipulation and settlement, without notice to or participation by
11 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
12 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
13 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
14 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
16 be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
19 effect as the originals.

20 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
24 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
25 writing executed by an authorized representative of each of the parties.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

DISCIPLINARY ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a veterinarian license, a veterinarian license shall be issued to Respondent and immediately revoked; the order of revocation is stayed and Respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Obey all laws. Respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. Further, Respondent shall report any arrest and/or conviction to the Board upon renewal of license and proof of compliance with the terms and conditions of the court order including, but not limited to probation and restitution requirements.

2. Quarterly reports and interviews. Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all terms and conditions of probation. In addition, the Board at its discretion may request additional in-person reports of the probationary terms and conditions. If the final written quarterly report is not made as directed, the period of probation shall be extended until such time as the final report is received by the Board. Respondent shall make available all patient records, hospital records, books, logs, and other documents to the Board, upon request.

3. Cooperation with probation surveillance. Respondent shall comply with the Board's probation surveillance program. All costs for probationary monitoring and/or mandatory premises inspections shall be borne by Respondent. Probation monitoring costs are set at a rate of \$100 per month for the duration of the probation. Respondent shall notify the Board of any change of name or address within 30 days of the change. Respondent shall notify the Board immediately in writing if Respondent leaves California to reside or practice in another state. Respondent shall notify the Board immediately upon return to California.

4. No preceptorships or supervision of interns. Respondent shall not supervise a registered intern and shall not perform any of the duties of a preceptor during the term of probation.

1 5. Notice to employers. Respondent shall notify all present and prospective
2 employers of the Decision in this case and the terms, conditions, and restrictions imposed on
3 Respondent by the Decision in this case. Within thirty (30) days of the effective date of this
4 Decision and within fifteen (15) days of Respondent undertaking new employment, Respondent
5 shall cause his employer to report to the Board in writing, acknowledging the employer has read
6 the Statement of Issues and Decision in this case and understands Respondent's terms and
7 conditions of probation. Relief veterinarians notify employers immediately.

8 6. Notice to employees. Respondent shall, upon or before the effective date of this
9 Decision, post or circulate a notice which actually recites the offenses for which Respondent has
10 been disciplined and the terms and conditions of probation, to all veterinary and animal health
11 technician employees, and to any preceptor, intern or extern involved in his veterinary practice.
12 Within fifteen (15) days of the effective date of this Decision, Respondent shall cause his
13 employees to report to the Board in writing, acknowledging the employees have read the
14 Statement of Issues and Decision in the case and understand Respondent's terms and conditions of
15 probation. Relief veterinarians notify employees immediately.

16 7. Owners and officers (corporations or partnerships): Knowledge of the law.
17 Respondent shall provide, within thirty days after the effective date of the Decision, signed and
18 dated statements from the owners, officers, or any owner or holder of ten percent (10%) or more
19 of the interest in Respondent's practice, stating said individuals have read and are familiar with
20 federal and state laws and regulations governing the practice of veterinary medicine.

21 8. Tolling of probation. If Respondent resides out of state upon or after effective
22 date of the decision, the time will be tolled and not apply towards the probationary period.
23 However, he shall comply with the following conditions only: quarterly reports and interviews,
24 continuing education and cost recovery. If Respondent returns to California, he must comply or
25 be subject to all probationary conditions for the period of probation.

26 Respondent, during probation, shall engage in the practice of Veterinary Medicine
27 in California for a minimum of 24 hours per week for six (6) consecutive months or as
28 determined by the Board. Should Respondent fail to engage in the practice of Veterinary

1 Medicine in California as set forth above, the time outside of the practice shall not apply to
2 reduction of the probationary terms.

3 9. Violation of probation. If Respondent violates probation in any respect, the
4 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
5 carry out the disciplinary order that was stayed. If a Statement of Issues or petition to revoke
6 probation is filed against Respondent during probation, or if the Attorney General's office has
7 been requested to prepare any disciplinary action against Respondent's license, the Board shall
8 have continuing jurisdiction until the matter is final, and the period of probation shall be extended
9 until the matter is final.


10 10. Completion of probation. All costs for probation monitoring and/or mandatory
11 premises inspections shall be borne by Respondent. Respondent shall notify the Board within 15
12 days of any changes to his practice situation or address of record while on probation. Failure to
13 pay all costs due shall result in an extended period of probation until the matter is resolved and
14 costs paid. Upon successful completion of probation and payment of all fees due, Respondent's
15 license will be fully restored.

16 11. Ethical training. Respondent shall take a Board-approved ethical training
17 course(s) for a minimum of twenty (24) hours during the first year of the probationary period.
18 Upon successful completion of the course, Respondent shall provide proof to the Board.

19 ACCEPTANCE

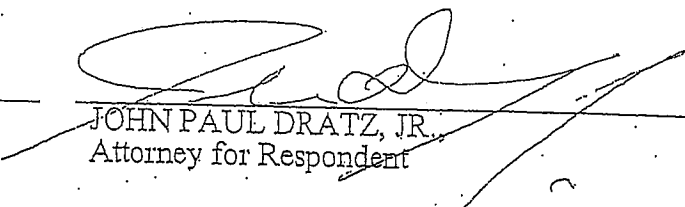
20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, John Paul Dratz, Jr. I understand the stipulation and the effect it
22 will have on my Application for a Veterinarian License. I enter into this Stipulated Settlement
23 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the Veterinary Medical Board.

25
26 DATED: 12-3-12


27 RYAN JAMES WHITNEY
28 Respondent

1 I have read and fully discussed with Respondent Ryan James Whitney the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: 12/3/12


5 _____
6 JOHN PAUL DRATZ, JR.
7 Attorney for Respondent


8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Veterinary Medical Board.

11 Dated: 12/3/12

12 Respectfully submitted,

13 KAMALA D. HARRIS
14 Attorney General of California
15 KAREN B. CHAPPELLE
16 Supervising Deputy Attorney General


17 NANCY A. KAISER
18 Deputy Attorney General
19 *Attorneys for Complainant*

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Exhibit A

Statement of Issues No. IV 2012 8

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No: 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8
9 BEFORE THE
VETERINARY MEDICAL BOARD
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues
Against:

Case No. IV 2012 8

13 RYAN JAMES WHITNEY
14 342 Temple Ave #4
Long Beach, CA 90814

STATEMENT OF ISSUES

15 Applicant for Veterinarian License

16 Respondent.

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18
19 Complainant alleges:

20 PARTIES

21 1. Susan M. Geranen (Complainant) brings this Statement of Issues solely in her
22 official capacity as the Executive Officer of the Veterinary Medical Board.

23 2. On or about December 17, 2010, the Veterinary Medical Board received an
24 application for a Veterinarian License from Ryan James Whitney (Respondent). On or about
25 December 14, 2010, Ryan James Whitney certified under penalty of perjury to the truthfulness of
26 all statements, answers, and representations in the application. The Board denied the application
27 on August 30, 2011.

28 ///

1 JURISDICTION

2 3. This Statement of Issues is brought before the Veterinary Medical Board, under the
3 authority of the following laws. All section references are to the Business and Professions Code
4 unless otherwise indicated.

5 4. Section 4800.1 of the Code states:

6 "Protection of the public shall be the highest priority for the Veterinary Medical Board in
7 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
8 public is inconsistent with other interests sought to be promoted, the protection of the public shall
9 be paramount."

10 STATUTORY PROVISIONS

11 5. Section 480 of the Code states, in part:

12 "(a) A board may deny a license regulated by this code on the grounds that the applicant
13 has one of the following:

14 ...
15 (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
16 benefit himself or herself or another, or substantially injure another.

17 (3) (A) Done any act that if done by a licentiate of the business or profession in question,
18 would be grounds for suspension or revocation of license.

19 (B) The board may deny a license pursuant to this subdivision only if the crime or act is
20 substantially related to the qualifications, functions, or duties of the business or profession for
21 which application is made."

22 6. Section 4875 of the Code provides, in part, that the Board of Veterinary Medicine
23 may revoke or suspend the license of any person to practice veterinary medicine, or any branch
24 thereof, in this state for any causes provided in the Veterinary Medicine Practice Act (Bus. &
25 Prof. Code, § 4800, et seq.).

26 7. Section 4883 of the Code states:

27 "The board may deny, revoke, or suspend a license or assess a fine as provided in Section
28 4875 for any of the following:

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...
"(c) Violation or attempting to violate, directly or indirectly, any of the provisions of this chapter [the Veterinary Medicine Practice Act].

...
"(g) Unprofessional conduct ...

...
"(o) Violation, or the assisting or abetting violation, of any regulations adopted by the board pursuant to this chapter [the Veterinary Medicine Practice Act]."

8. Section 4825 of the Code states:

"It is unlawful for any person to practice veterinary medicine or any branch thereof in this State unless at the time of so doing, such person holds a valid, unexpired, and unrevoked license as provided in this chapter [the Veterinary Medicine Practice Act]."

9. Section 4826 of the Code states:

"A person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he or she does any one of the following:

"(a) Represents himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.

"(b) Diagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure or relief of a wound, fracture, bodily injury, or disease of animals.

...
"(f) Uses any words, letters or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. This use shall be prima facie evidence of the intention to represent himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry."

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1 REGULATION

2 10. California Code of Regulations, title 16, section 2040, subdivision (a) states, in part:
3 "For the purposes of denial, suspension, or revocation of a license pursuant to Division
4 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be
5 substantially related to the qualifications, functions or duties of a person holding a license under
6 Chapter 11 of Division 2 of the code if to a substantial degree it evidences present or potential
7 unfitness of a person holding a license to perform the functions authorized by his or her license in
8 a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but
9 not be limited to those involving the following:

10 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
F1 violation of, or conspiring to violate any provision or term of Chapter 11, Division 2 of the code."

12 FIRST CAUSE FOR DENIAL OF APPLICATION

13 (Unlicensed Practice of Veterinary Medicine)

14 11. Respondent's application is subject to denial under sections 4883, subdivision (c),
15 and (o), and 480, subdivision (a)(2), in conjunction with California Code of Regulations, title 16,
16 section 2040, subdivision (a), for violating sections 4825 and 4826 (a), (b), and (f), in that
17 Respondent practiced veterinary medicine without a license. The circumstances are as follows:

18 12. On or about November 6, 2008, the Board received a Complaint from consumer
19 Jennifer Rosen, alleging that Veterinarian James Jansen and his staff at Jansen Animal Hospital,
20 Torrance, California (Jansen Animal Hospital), contributed to the death of her dog, "Lady", a six-
21 year old Pit Bull, when they failed to treat her dog properly after personnel at Jansen Animal
22 Hospital performed surgery on Lady's hind legs. The Complaint indicated that Respondent, an
23 unlicensed and unregistered individual, might be practicing veterinary medicine at Jansen Animal
24 Hospital without a California veterinary license. When interviewed, Rosen stated that Respondent
25 was the primary person who treated Lady.

26 13. Subsequently, the Division of Investigation (DOI), Department of Consumer Affairs,
27 conducted an investigation into allegations of unlicensed activity at Jansen Animal Hospital. On
28 or about June 30, 2009, DOI Senior Investigator, Larry Moore, called Jansen Animal Hospital

1 and asked to make an appointment to have his dog be examined by "Dr. Whitney." The
2 receptionist at Jansen Animal Hospital told the investigator that "Dr. Whitney" works Sunday
3 through Thursday from 5:00 p.m. to midnight. The investigator told the receptionist that his dog
4 had Addison's disease and asked whether "Dr. Whitney" was familiar with the disease. The
5 receptionist said that "Dr. Whitney" had been working there a long time and he was very good.
6 The receptionist told the investigator that if he wanted a daytime appointment, he could have an
7 appointment with Dr. Jansen. Investigator Moore said he would call back.

8 14. On or about August 4, 2009, Investigator Moore conducted an undercover call to
9 Jansen Animal Hospital and made an appointment with "Dr. Whitney" for his dog on August 10,
10 2009 at 10:00 a.m.

11 15. On or about August 10, 2009, Investigator Moore took his own dog, which had
12 previously been diagnosed with Addison's disease, to Jansen Animal Hospital. The investigator
13 gave the dog's prior medical records to the receptionist, who stated that "Dr. Whitney" would be
14 with him shortly.

15 16. Investigator Moore picked up a business card at the reception desk for "Dr. Ryan
16 Whitney, Veterinarian." Respondent, dressed in surgical scrubs, identified himself as "Dr.
17 Whitney" and showed Investigator Moore to the examination room. Respondent then proceeded
18 to examine the dog and stated that he could prescribe medication for the dog.

19 17. At that point, Investigator Moore identified himself as a DOI investigator and
20 interviewed Respondent. Respondent said that he was not a veterinarian and not a registered
21 veterinary technician. DOI Senior Investigator Holmes joined Respondent and Investigator
22 Moore in the examination room. Respondent stated that he prepared patients for surgeries,
23 assisted surgery by holding and passing instruments, placed catheters, and spoke with clients.
24 With regard to the services he provided to Lady, Respondent said that he "took blood, monitored
25 fluid, therapy and administered meds". He also stated that he dealt with Rosen, Lady's owner,
26 more than she dealt with Dr. Jansen. Respondent said he has worked at Jansen Animal Hospital
27 for ten years.

28 ///

1 18. Investigator Moore also interviewed Nancy Hickey (Hickey), who said that she has
2 worked at Jansen Animal Hospital for about ten years. She said that Respondent is introduced
3 "[a]s Ryan and on occasion as Dr. Whitney." Hickey stated that Whitney conducts the blood
4 work, x-rays, vaccines and injections. When asked whether Respondent is able to perform
5 physical exams and recommend diagnostics and treatments, she stated, "Yes, he does."

6 19. The DOI investigation revealed that the allegation that Respondent was practicing
7 unlicensed veterinary medicine at Jansen Animal Hospital was substantiated. Respondent was
8 cited by Investigator Holmes for violating Business and Professions Code Section 4825,
9 practicing without a license.

10 SECOND CAUSE FOR DENIAL OF APPLICATION

11 (Committed Acts Which If Done By A Licentiate Would be Grounds For Discipline)

12 20. Respondent's application is subject to denial under Code section 480(a)(3), in that
13 Respondent committed acts which are grounds for suspension or revocation under 4875 and 4883,
14 subdivisions (c), (g), (o), in conjunction with California Code of Regulations, title 16, section
15 2040, subdivision (a), for violating provisions of the Veterinary Medical Act, specifically,
16 sections 4825 and 4826 (practicing veterinary medicine without a license), as set forth in
17 paragraphs 11 through 19, above.

18 DISCIPLINE CONSIDERATIONS

19 21. On or about June 9, 2011, in a prior action, the Board issued Citation Number 2270-
20 C to Respondent for violating Section 4825 (licensure requirement) and Section 4826 (a), (b), and
21 (c) (unlicensed practice of veterinary medicine) and ordered Respondent immediately cease and
22 desist from the unlicensed practice of veterinary medicine. The underlying facts relating to the
23 Citation are set forth in paragraphs 11 through 19, above. The Citation is now final and is
24 incorporated by reference as if fully set forth.

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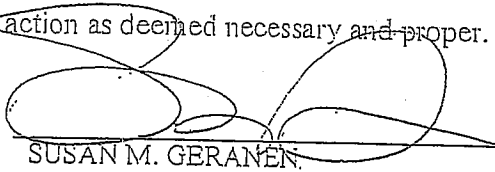
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Veterinary Medical Board issue a decision:

1. Denying the application of Ryan James Whitney for an Applicant for Veterinarian License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 1/4/2012



SUSAN M. GERANEN
Executive Officer
Veterinary Medical Board
State of California
Complainant

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