

1ST PETITION

BEFORE THE _____

BOARD OF EXAMINERS IN VETERINARY MEDICINE

STATE OF CALIFORNIA

In the Matter of the Petition for)
Reinstatement of)
)
DANIEL KOLLER, D.V.M.)
780 Elm Avenue)
Seaside, CA)
)
License No. 5490)
)
Respondent.)
)
N 14955

DECISION

This matter was heard on July 30, 1980, at Monterey, California, before the Board of Examiners in Veterinary Medicine of the State of California consisting of: Charlene Drennon; Connor Jameson, D.V.M.; Roger Resurreccion, D.V.M.; and Stuart Friedman, D.V.M. and President of the Board. Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

The complainant was represented by Charles W. Getz, IV, Deputy Attorney General.

Daniel Koller, D.V.M., was present and was represented by Ronald A. Parravano, Esq., Second Floor, 798 Cass Street, Monterey, California 93940.

The following decision is made:

FINDINGS OF FACT

I

Daniel Koller, D.V.M. (respondent) was issued license No. 5490, authorizing the practice of veterinary medicine in the State of California, by the Board of Examiners in Veterinary Medicine (the Board) on June 24, 1974.

II

Effective April 11, 1979, respondent's license was revoked, after hearing, upon determination by the Board that respondent had engaged in cruelty to animals on nine separate occasions, had employed and permitted an unlicensed person to perform services which only a licensed veterinarian may perform, had been convicted of aiding and abetting unlicensed practice, and had been convicted of cruelty to animals.

III

On May 10, 1980, respondent petitioned the Board for reinstatement of his license to practice veterinary medicine in the State of California.

IV

(a) Respondent is 33 years old, married and the father of a six-month-old boy. He and his family currently reside in Berkeley, California.

(b) Just prior to the revocation of his license, respondent was admitted to the Hastings College of Law and will be starting his third year in September, 1980. He has participated in moot court competition and clerked for the Division of General Counsel (Ethics Committee) for the State Bar Association. He will serve as editor of the Hastings Law News and will be teaching International Law Moot Court during the coming school term.

V

(a) Following his criminal conviction, respondent was ordered to serve 100 days in the County jail. He was denied admission to a work furlough program and served his time while simultaneously commuting to San Francisco, on a daily basis, to attend law school.

(b) After his trial, respondent helped organize a Pee Wee Ice Hockey team for children in the Monterey area.

(c) Respondent has strong community support. He has, in the past, contributed of his time and skills to the Seaside community. Among his supporters, he has a reputation for generosity toward clients and fellow workers.

VI

(a) Respondent has leased, with an option to buy, his clinic in Seaside. He visits the facility on weekends to perform maintenance work, if needed.

(b) Since the revocation of his license, respondent has attempted to maintain his knowledge in veterinary medicine by reading current literature in the field. He has not enrolled in any continuing education classes due to financial considerations.

(c) Respondent is financially strapped. He owes \$53,000.00 in legal fees and has found it necessary to borrow from friends and family to meet his educational obligations.

VII

(a) Following termination of his probation, respondent's verdict of guilty was set aside and the information against him dismissed in accordance with Section 1203.4(a) of the Penal Code.

(b) Respondent has suffered no other criminal conviction. Although he continues to maintain his innocence of the charges brought against him, he accepts the legal processes which resulted in his conviction and the revocation of his license.

(c) Respondent is licensed to practice veterinary medicine in the State of Oregon. Following a disciplinary hearing in June 1980, the Oregon Board revoked his license, stayed the revocation and placed respondent on probation for a period of one year.

VIII

A psychological evaluation of respondent, performed on July 9, 1977, concluded by recommending that respondent undergo professional counseling. Respondent has not sought such therapy due to his financial problems.

DETERMINATION OF ISSUES

I

The burden of proof in administrative reinstatement hearings is on the person seeking reinstatement of his license. (Housman v. Board of Medical Examiners /1948/, 84 CA2d 308)

II

The burden must be met by producing positive evidence of rehabilitation. (Epstein v. California Horse Racing Board /1963/, 222 CA2d 831)

III

In determining whether or not rehabilitation has occurred, the following factors have been considered by the courts:

1. Conduct since offense. (Vaughn v. State Bar, 208 Cal. 740; Maggart v. State Bar of California /1946/, 29 Cal. 2d 439)

2. Proper attitude of mind. (In re Andreani /1939/, 14 Cal. 2d 736; Wettlin v. State Bar of California /1944/, 24 Cal. 2d 862; Feinstein v. State Bar of California /1952/, 39 Cal. 2d 541)

3. A sufficient period of time has elapsed to demonstrate rehabilitation. (In re Phillips /1941/, 17 Cal. 2d 55; Maggart /supra/)

4. Letters of recommendation and favorable testimony of witnesses as to their observations of the daily conduct and mode of living of the applicant. (Preston v. State Bar of California /1946/, 28 Cal. 2d 643; Feinstein /supra/)

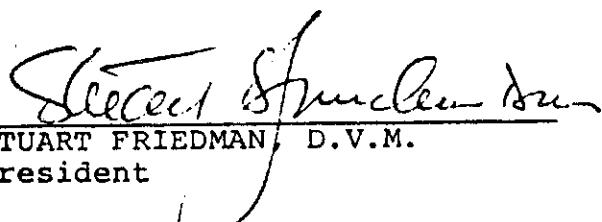
IV

The Board has determined the crime of cruelty to animals to be so heinous that revocation is the only appropriate penalty. Considering the seriousness of the conduct found to have been engaged in by respondent, the short period of time which has elapsed since the revocation of his license, and the lack of sufficient testimony as to respondent's daily conduct and mode of living since revocation, the Board determines that there is unconvincing proof that it would be in the public interest to reinstate the license at this time.

ORDER

The petition of Daniel Koller, D.V.M., for reinstatement of his license is denied.

DATED: Aug 9 / 1980


STUART FRIEDMAN, D.V.M.
President

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