

BEFORE THE BOARD OF EXAMINERS IN VETERINARY MEDICINE  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

DANIEL KOLLER, D.V.M.  
780 Elm Avenue  
Seaside, California  
License No. 5490

No. 76/77-1

N 9387

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law  
Judge is hereby adopted by the Board of Examiners in  
Veterinary Medicine as its Decision in the  
above-entitled matter.

This Decision shall become effective on 7/11/79.

IT IS SO ORDERED 7/11/79.



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)

PROPOSED DECISION

This matter was heard on an Accusation and an amendment thereto before Robert S. Kendall, Administrative Law Judge, State of California, Office of Administrative Hearings, on May 22, 23, 24, and 25, 1978. Further hearing was had on January 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, and February 2, 1979.

The Board of Examiners in Veterinary Medicine was represented by Charles W. Getz IV, Deputy Attorney General.

Respondent Daniel Koller was present at all sessions and was represented by his counsel, Darrell J. Salomon; attorney at law.

Accordingly, the following decision is proposed, certified, and forwarded:

FINDINGS OF FACT

I

Gary K. Hill is Executive Secretary of the Board of Examiners in Veterinary Medicine (Board) and made the charges and allegations in the Accusation dated February 1, 1977, and the amendment to the Accusation dated December 19, 1978, in his official capacity and not otherwise.

II

On June 24, 1974, Daniel Koller, D.V.M. (respondent), was issued license No. 5490. The license has been in full force and effect at all times hereafter mentioned.

FOR A FIRST CAUSE FOR DISCIPLINARY ACTION

III

It was established that on or about January 1975 to approximately August 1976, respondent physically abused animals under his care at Seaside Pet Hospital as set out hereafter:

- a) In November 1975, on a day not established, respondent, while angry, in the presence of a kennel attendant, repeatedly and continuously for several minutes slapped and hit forcefully about the head, with his hand closed in a half fist, a dog identified as "Coco" because the dog refused to cease barking.
- b) On a date not established but within the period stated above, respondent, while in the process of removing bandages from the paws of a siamese cat which had previously been declawed, became angry when the kennel attendant was unable properly to restrain the animal on the table. Respondent seized the animal roughly by the loose skin on its neck and back and angrily, violently, and repeatedly slammed it feet first on the table surface until the cat's feet were bleeding profusely, both before and after the bandages were actually removed.
- c) On an unascertained date in October 1974, it was established respondent, while attempting to give deworming medicine to a Lhasa Apso dog owned by client Grace Fontes, lost his temper when the dog snapped at him. Thereafter, in the presence of a kennel attendant, respondent held the animal's head and pounded it repeatedly and violently on the floor and sides of its cage for several minutes, despite the entreaties of the attendant to cease such action.

As a consequence, the dog sustained a hemorrhage of the conjunctiva of its eye or eyes. Respondent thereafter told the kennel attendant to enter on the animal's treatment record that the animal had suffered a reaction to the medicine administered, which the attendant refused to do. Respondent subsequently told Mrs. Fontes that her dog had had a reaction to medication, when in truth and in fact, the animal's injury had been caused by his actions described above.

- d) On an unascertained date in the period set out, respondent, who was attempting to inject a Labrador dog for surgery, became irate because the frightened, restless animal snapped at him and attempted to back off the table, despite the efforts of the kennel assistant to restrain it by use of a lead. Respondent, in anger, seized the dog's loose neck skin and then bit the animal on this skin.
- e) On an unascertained date between January 1975 and September 1975, respondent, after having trouble removing a recalcitrant dachshund from its cage to prepare it for surgery,

suspended the animal totally off the floor by a slip noose lead for a period not less than thirty seconds while carrying the animal from the kennel area to the surgery. Immediately thereafter, a kennel attendant observed the animal was bleeding from its nose.

f) It was established that on at least two occasions during daytime hours of the period July 25 through July 31, 1975, respondent maliciously and wantonly physically abused a shepherd crossbreed dog, which had previously bitten his hand, by hanging it partially, and at times wholly, off the ground and beating it with his fist while suspending or hanging it. Respondent was seen to kick this dog with his foot or feet, both while it was suspended and after he had dropped it to the floor during the course of conduct related above. The animal was seen to lose consciousness and to urinate and defecate during this period.

It was established that the dog was seen shortly after the first observed beating to have blood around its mouth and nose and was seen to have had three teeth kicked or knocked out as a direct result of respondent's actions.

Subsequent to the events described above, the animal was observed separately by two of respondent's employees dead in the freezer used to store dead animals. Respondent refused an explanation of the circumstances which led to the apparently healthy animal being euthanized when asked about it by these employees.

At a later time in August 1975, respondent, on two occasions after the death of this stray animal, told Maria Green, the person who had been instrumental in its being at Seaside for treatment of a minor leg injury, that the dog was well and had been placed by him in a new home in Carmel Valley, when in fact and truth, the animal was already dead.

g) It was established that on two unascertained dates in July 1975, respondent was observed by an employee to become angry with a fractious cat, "Kiki," owned by client Clara Goral, while attempting to take it from a cage. He grasped the cat by the loose skin of its back and neck and thereafter slammed the animal violently not less than twice on the sides and floor of its cage.

h) It was not established by the weight of the evidence that respondent's treatment of "Henry," an Australian shepherd crossbreed, during an examination prior to surgery, or subsequently while attempting to place him in his cage, constituted cruelty to the animal or physical abuse. It is true respondent was observed by employees to handle and treat the animal roughly and forcefully on two occasions. It was not, however, established that respondent, under all the circumstances then existing, attempted to or intended

to harm the animal despite the fact he had lost his temper because of the dog's resistance to him.

i) It was not established that respondent on or about July 21, 1976, or on any other date, acted cruelly toward or physically abused "Benji," client Leon Goldstein's dog. While it was established respondent roughly and violently dragged this resisting dog down a hallway, suspending it off its front legs from time to time and on at least one occasion causing it to bang its head against a door frame, it was not established he did so for the purpose or with the intention of acting cruelly toward the animal.

While it was established respondent did not subsequently remove sutures he had placed in the animal and gave Mr. Goldstein a pair of suture removers so Goldstein could remove them, it was not established that respondent had refused to complete a procedure once commenced, thereby departing from accepted community standards of professional conduct.

#### IV

a) It was not established by respondent that he was using a system and method of animal restraints referred to as the "Koehler Method" of animal behavior modification when handling the described animals in the manner set out in Finding of Fact III.

b) It was not established that the various veterinary assistants and other employees who testified as eyewitnesses to the events set out in Finding of Fact III were misled, mistaken, or untruthful as to what they observed, either due to their alleged inexperience in kennel work or from claimed bias toward or personal dislike of respondent.

c) It was established that on numerous occasions respondent would temporarily suspend fractious animals by use of a slip lead for the purpose of gaining control over the animal prior to administering a chemical tranquilizer. The periods of suspension are found to have been only of sufficient duration, generally only a period of a few seconds, to accomplish the purpose. It was not thereby established that any cruelty to the animal involved was intended or occurred.

#### FOR A SECOND CAUSE FOR DISCIPLINARY ACTION

#### V

a) It was established that intermittently for periods of varying length between December 1975 to and including September 1976, Mark Thomsen (Thomsen), a University of California--Davis veterinary student, who was not then a licensee of the Board, was employed by respondent at Seaside.

b) During this period, at various times and dates not determined, Thomsen regularly performed various major and minor small animal surgical procedures, including feline and canine neuters and spays. When such procedures were performed by Thomsen, it was established that he would sometimes be under the direct and continuous supervision of a licensed veterinarian (licensee) or there would be a licensee present elsewhere in the premises. It was established that at other times, he would perform surgical procedures without a licensee being present either in the surgery or elsewhere in the clinic.

c) It was established that no formal, recognized legal preceptorship program had been established at Seaside at any time. It was also established that for many years it was a common and widespread practice in California for licensees to employ third- and fourth-year veterinary students in veterinary clinics where the students could learn surgical procedures by actual performance training.

d) It was established that at some date prior to August 1976, respondent was aware and knew that the practice described in (b) and (c) above was in violation of the Veterinary Practice Act. In August 1976, respondent discussed his inability to hire Michael Murray with Murray, a Purdue University third-year student, who respondent had planned to hire to work under an associate veterinarian to gain surgical skills and practice. In August 1976, respondent showed to and discussed with Murray a bulletin or newsletter from the Board wherein preceptorship programs were described and licensees advised that only advanced students in established, recognized preceptorship programs could perform surgical procedures. It was established that in July 1976, Board Newsletter Volume 2, No. 1, discussed the issue of unlicensed students performing surgeries.

e) It was established that on September 8, 1976, Thomsen was seen at Seaside by an investigator for the Board while he was performing a major surgical procedure on an animal. Respondent was on the premises at the time and neither he nor any other licensee was present when Thomsen was performing this feline hysterectomy. Thereafter, in an interview with the Board investigator, respondent claimed that this instance was the first time Thomsen had ever performed solo, unsupervised surgery, when in fact and in truth, Thomsen had done so on numerous prior occasions while employed by respondent and respondent knew this.

f) It was established that during March 1976, Thomsen was assisted on at least ten occasions by veterinarian assistant Tandy Broderson in performance of spays and neuters. Broderson only occasionally observed respondent enter the surgery during the procedures and never observed any licensed veterinarian supervise any of Thomsen's work on an animal while she acted as Thomsen's assistant.

g) On June 23, 1977, in Superior Court for the County of Monterey, respondent was found guilty after jury trial of a misdemeanor violation of Business and Professions Code Section 4825 (Aiding and Abetting Unlicensed Practice), on charges arising out of the employment of Thomsen as alleged in (b) and (c) above. Respondent was fined \$200 thereon.

h) Official notice is taken that this judgment is final.

FOR A THIRD CAUSE FOR DISCIPLINARY ACTION

VI

a) On June 23, 1977, in the Superior Court for the County of Monterey, respondent was convicted of a single violation of Penal Code Section 597(b) (Cruelty to Animals). Therein, a jury found respondent had wilfully and unlawfully inflicted needless suffering and cruelty to a mixed-breed German Shepherd dog, on or about July 28, 1975; which is found to be the same animal referred to hereinabove in the First Cause for Disciplinary Action, Finding of Fact III(f).

b) Respondent was sentenced to 100 days in County Jail on this count.

c) Official notice is taken that this judgment is final.

DETERMINATION OF ISSUES

I

The matters set out in Finding of Fact III(a), through (g) establish respondent has committed acts of cruelty to animals entrusted to his professional care and has thereby been guilty of unprofessional conduct pursuant to the provisions of Business and Professions Code Sections 4883(g) and (n). Therefore, grounds for disciplinary action exist pursuant to the provisions of Business and Professions Code Section 4875.

II

The matters set out in Finding of Fact V(a) through (h) establish that respondent knowingly, after August 1976, employed an unlicensed person to perform services that only a licensed veterinarian may perform and thereby aided and abetted such activity, contrary to the provisions of Business and Professions Code Sections 119(b), 125(a), 4825, 4831, and 4826. Therefore, grounds for disciplinary action exist pursuant to the provisions of Business and Professions Code Section 4883(g) and Section 4875.

III

The matters set out in Finding of Fact V(a) through (h) establish respondent has been convicted on a charge of aiding and

abetting the unlicensed practice of veterinary medicine in violation of Business and Professions Code Section 4825. Therefore, grounds for disciplinary action exist pursuant to Business and Professions Code Sections 4883(a), (g), (c), (j), and (n), 4885, and 4875.

#### IV

The matters set out in Finding of Fact VI(a) through (c) establish respondent has been convicted on a charge of cruelty to animals in violation of Business and Professions Code Section 4885; a charge related to the practice of veterinary medicine. Therefore, grounds for disciplinary action exist pursuant to Business and Professions Code Sections 4883(a), (g), (c), (m), and (n), 4885, and 4875.

#### SPECIAL DETERMINATIONS OF ISSUES

#### V

- a) Those matters set out in paragraph 3(c), (i), and (j) of the Accusation should be dismissed for failure of proof by substantial evidence.
- b) The motion to strike the Second Cause for Disciplinary Action as void because of vagueness is denied.
- c) The testimony of witness Ettleman and respondent's Exhibit AA (Dr. Leighton Letter) is ruled admissible only to establish mitigation on the issue of the practice of veterinarians hiring advanced students to perform surgery and not to establish that confusion existed statewide in the community of veterinarians as to whether such practice was legal or illegal.
- d) Both respondent's Exhibit CCC (Hart letter and Counsel Salomon's letter of February 28, 1979, in explanation thereof) are refused in evidence and remain marked for identification only as part of the record herein and not as evidence.
- e) Counsel Getz's letter of February 22, 1979, offers, inter alia, a certain statement of Lucille Withers. The offer is hereby refused and the statement is not made a part of the record herein or marked in evidence. Counsel Getz's letter is marked as Exhibit 14 for identification only and is ruled material only for the purpose of expression of an objection to the uses of respondent's Exhibit CCC for identification.

#### ORDER

#### I

The license No. 5490 of respondent Daniel Koller, D.V.M., to practice veterinary medicine in California is hereby revoked,

on each and every of Determinations of Issues I, II, III, and IV; singly, severally, and separately.

II

The allegations contained in paragraph 3(c), (i) and (j) of the Accusation are hereby dismissed.

DATED: April 2, 1979

  
ROBERT S. KENDALL  
Administrative Law Judge

RSK:map