

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

In the Matter of the Accusation Against:

DANIEL KOLLER, DVM
12897 Corbett Court
San Diego, CA 92130

Veterinary License No. 5490

Respondent.

Case No. AV 2002 8

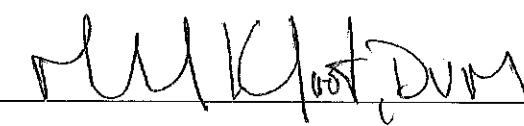
OAH No. L-2001-120388

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 November 19, 2004.

It is so ORDERED October 20, 2004.



FOR THE VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
2 of the State of California
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**BEFORE THE
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AV 2002 8

DANIEL KOLLER, DVM
12897 Corbett Court
San Diego, CA 92130

OAH No. L-2001-120388

Veterinary License No. 5490

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Susan M. Geranen ("Complainant") is the Executive Officer of the Veterinary Medical Board. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Rita Lane Medellin, Deputy Attorney General.

2. Daniel Koller, DVM is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about June 24, 1974, the Veterinary Medical Board issued Veterinary License No. 5490 to Daniel Koller, DVM ("Respondent"). Said license was revoked

1 effective April 11, 1979. In July 1984, Respondent was granted a probationary license and put
2 on probation for five years. Respondent completed his probation in September 1999. The
3 Veterinary License was in full force and effect at all times relevant to the charges brought in
4 Accusation No. AV 2002 8 and will expire on January 31, 2005, unless renewed.

5 JURISDICTION

6 4. Accusation No. AV 2002 8 was filed before the Veterinary Medical Board
7 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
8 Accusation and all other statutorily required documents were properly served on Respondent on
9 September 3, 2002. Respondent timely filed his Notice of Defense contesting the Accusation.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations
12 in Accusation No. AV 2002 8. Respondent has also carefully read, and understands the effects of
13 this Stipulated Settlement and Disciplinary Order.

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

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of the following allegations from Accusation
25 No. AV-20028:

26 9. Accusation No. AV-20028 is brought before the Board, under the
27 authority of the following sections of the Business and Professions Code ("Code").

28 ///

1 10. Section 4022 of the Code provides, in pertinent part, that a dangerous drug
2 is any drug that by federal or state law can be lawfully dispensed only on prescription or
3 furnished pursuant to Section 4006.

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

11 12. Section 4883 of the Code states:

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

14 ...

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

17 ...

18 (g) Unprofessional conduct, that includes, but is not limited to, the following:

19 ...

20 (2) (A) The use of or prescribing for or administering to himself or
21 herself, any controlled substance.

22 (B) The use of any of the dangerous drugs specified in Section 4022 or
23 of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a
24 person licensed under this chapter [the Veterinary Medicine Practice Act], or to any other
25 person or to the public, or to the extent that the use impairs the ability of the person so
26 licensed to conduct with safety the practice authorized by the license.

27 ...

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(3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances.

13. Health and Safety Code Section 11154 provides that except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

14. Health and Safety Code Section 11158(a) provides in pertinent part that except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

15. Health and Safety Code Section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

16. Health and Safety Code Section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

17. Title 16, California Code of Regulations ("CCR") section 2030(f)(6) provides in pertinent part that all drugs and biologicals shall be maintained, administered, dispensed and prescribed in compliance with state and federal laws.

18. Title 21, Code of Federal Regulations ("CFR") section 1301.75(b) provides in pertinent that controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet.

19. CFR section 1304.22(a) provides in pertinent part that each person registered or authorized to manufacture controlled substances shall maintain records with the following information:

(2) For each controlled substance in finished form,

(i) The name of the substance;

(ii) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(iv) The number of units of finished forms and/or commercial containers acquired from other persons, including the date of and number of units and/or commercial containers in each acquisition to inventory and the name, address, and registration number of the person from whom the units were acquired;

(vii) The number of commercial containers distributed to other persons, including the date of and number of container in each reduction from inventory, and the name, address, and registration number of the person to whom the containers were distributed;

(ix) The number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

22 20. CFR section 1304.22(c) provides in part that each person registered or
23 authorized to dispense controlled substances shall maintain records with the same information
24 required of manufacturers pursuant to paragraph (a)(2) (i), (ii), (iv), (vii) and (ix) of this section.
25 In addition, records shall be maintained of the number of units or volume of such finished form
26 dispensed, including the name and address of the person to whom it was dispensed, the date or
27 dispensing, the number of units or volume dispensed, and the written or typewritten name or
28 initials of the individual who dispensed or administered the substance on behalf of the dispenser.

1 21. Section 118(b) of the Code provides, in pertinent part, that the expiration
2 of a license shall not deprive a board of jurisdiction to proceed with a disciplinary action during
3 the period within which the license may be renewed, restored, reissued or reinstated. Under
4 Business and Professions Code section 4843.5, the Board may renew an expired license at any
5 time within five years after the expiration.

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

10 23. "DRUGS"

11 "Telazol" is the Brand name of the drug "Tiletamine." "Tiletamine" is a
12 pharmaceutical related to "Ketamine" and "PCP" which is used almost exclusively for
13 anaesthetizing animals by veterinarians. It is primarily sold compounded with "Zolazepam" (a
14 benzodiazepine) as a powder/tablet which is reconstituted with 0.9% saline solution and then
15 injected. "Tiletamine" is a controlled substance and is listed as a Schedule III drug as designated
16 by Title 21, Code of Federal Regulations, section 1308.13(c)(13).

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Using and Administering a Controlled Substance)**

19 24. Respondent admits that he is subject to disciplinary action under Code
20 section 4883(g)(2)(A) for unprofessional conduct in that Respondent illegally used and
21 administered to himself a controlled substance. Respondent admits the circumstances are as
22 follows:

23 a. On October 27, 2001, paramedics responded to an emergency call
24 at respondent's home located at 12897 Corbett Court, San Diego. Respondent's 16 year
25 old daughter told paramedics that her mother and respondent might have taken drugs.
26 Paramedics found Mrs. Ellen Koller, lying unconscious on the floor in the doorway to the
27 master bedroom. Initially, Mrs. Koller was not breathing, had pin point pupils and had a
28 fresh injection site in her left arm, which was bleeding. Paramedics determined that Mrs.

1 Koller was under the influence of a narcotic or narcotic type drug and was experiencing a
2 possible narcotic overdose. After treatment with Narcan, Mrs. Koller gradually regained
3 consciousness and was transported to the hospital.

4 b. Paramedics found respondent on the bed in the master bedroom.
5 He was initially unconscious but was partially awakened by touch. Paramedics found that
6 respondent initially had pin point pupils and blood from a fresh injection site in his right
7 arm. Paramedics found a used syringe next to respondent on a bedside table. Police
8 Officers found in respondent's pant pocket a vial which was labeled Telazol, which
9 contained a mixture of Tiletamine HCL and Zolazepam HCL. The vial contained a
10 rubber top. The liquid could only be extracted using a needle and syringe. The rubber
11 top on the vial recovered from respondent had been punctured and 3/4 of the liquid was
12 gone. The vial was clearly labeled "for animal use only" and "not for human use."

13 c. The paramedics on the scene determined that both respondent and
14 Mrs. Koller appeared to be under the influence of a narcotic.

15 d. On October 27, 2001, a blood sample was taken from respondent
16 by the San Diego Police Department which later tested positive for Zolazepam.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Use of a Dangerous Drug to an Extent or in a
19 Manner to be Dangerous or Injurious to Himself)**

20 25. Respondent admits he is subject to disciplinary action for unprofessional
21 conduct under Code section 4883(g)(2)(B) in that respondent used a dangerous drug, Telazol, a
22 Schedule III controlled substance under Title 21, Code of Federal Regulations, section
23 1308.13(c)(13), to the extent and in a manner as to be dangerous and injurious to himself as set
24 forth in paragraph 24 above, which is realleged and incorporated herein by reference.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct: Violation of Controlled Substance Laws)**

27 26. Respondent admits he is subject to disciplinary action for unprofessional
28 conduct under Code section 4883(g)(3) in that he administered a controlled substance to himself

1 in violation of Health and Safety Code Section 11170 as set forth in paragraph 24 above, which
2 is realleged and incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

5 27. Respondent admits he is subject to disciplinary action for unprofessional
6 conduct under Code section 4883(g)(3) in that he administered and furnished a controlled
7 substance to himself in violation of Health and Safety Code Section 11171 as set forth in
8 paragraph 24 above, which is realleged and incorporated herein by reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

11 28. Respondent admits he is subject to disciplinary action for unprofessional
12 conduct under Code section 4883(g)(3) in that he administered, dispensed and furnished a
13 controlled substance to himself in violation of Health and Safety Code Section 11154 as set forth
14 in paragraph 24 above, which is realleged and incorporated herein by reference.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

17 29. Respondent admits he is subject to disciplinary action for unprofessional
18 conduct under Code section 4883(g)(3) in that he dispensed a Schedule III controlled substance
19 to himself without a valid prescription in violation of Health and Safety Code Section 11158(a)
20 as set forth in paragraph 24 above, which is realleged and incorporated herein by reference.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct: Violation of Federal Statutes)**

23 30. Respondent admits he is subject to disciplinary action for unprofessional
24 conduct under Code section 4883(g)(3) and CCR section 2030(f)(6) in that he has violated
25 federal statutes regulating controlled substances in that respondent failed to store a controlled
26 substance located at his home in a securely locked, substantially constructed cabinet in violation
27 of CFR section 1301.75(b). Respondent admits the circumstances are as follows:

28 //

1 a. On or about October 27, 2001, when paramedics and police
2 responded to the 911 call to respondent's home, they found a controlled substance, one
3 vial of Telazol in respondent's pant pocket, which was not stored in a securely locked and
4 substantially constructed cabinet.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Federal Statutes)

7 31. Respondent admits he is subject to disciplinary action for unprofessional
8 conduct under Code section 4883(g)(3) and CCR section 2030(f)(6) in that he has violated
9 federal statutes regulating controlled substances in that respondent failed to maintain records
10 regarding the controlled substance in his possession, Telazol, including a running inventory, the
11 number of units dispensed, name and address of the person to whom it was dispensed, the date of
12 dispensing and the initials of the individual who dispensed or administered the substance in
13 violation of CFR sections 1304.22(a)(2) and 1304.22(c). Respondent admits the circumstances
14 are as follows:

22 32. Complainant withdraws the Ninth and Tenth Causes for Discipline against
23 respondent.

24 33. Respondent agrees that his Veterinary License is subject to discipline and
25 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
26 Order below.

27 | //

28 | //

CONTINGENCY

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

12 35. This stipulation is intended by the parties herein to be an integrated writing
13 representing the complete, final and exclusive embodiment of the agreements of the parties in the
14 above-entitled matter.

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

18 37. In consideration of the foregoing admissions and stipulations, the parties
19 agree that the Board may, without further notice or formal proceeding, issue and enter the
20 following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Veterinary License No. 5490 issued to Respondent Daniel Koller, DVM is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1 During said suspension, Respondent shall not enter any veterinary hospital which
2 is licensed by the Board. Additionally, Respondent shall not manage, administer, or be a
3 consultant to any veterinary hospital or any veterinarian during the period of actual suspension
4 and shall not engage in any veterinary-related service or activity.

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

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

15 3. **Cooperation With Probation Surveillance.** Respondent shall comply
16 with the Board's probation surveillance program.

17 4. **No Preceptorships or Supervision of Interns.** Respondent shall not
18 supervise a registered intern and shall not perform any of the duties of a preceptor.

19 5. **Notice to Employers.** Respondent shall notify all present and prospective
20 employers of the Decision in this case and the terms, conditions, and restrictions imposed on
21 Respondent by the Decision in this case. Within thirty (30) days of the effective date of this
22 Decision and within fifteen (15) days of Respondent undertaking new employment, Respondent
23 shall cause his employer to report to the Board in writing, acknowledging the employer has read
24 the Stipulated Settlement and Disciplinary Order and Decision in this case and understands
25 Respondent's terms and conditions of probation. Relief veterinarians shall notify employers
26 immediately.

27 6. **Notice to Employees.** Respondent shall, upon or before the effective date
28 of this Decision, post or circulate a notice which actually recites the offenses for which

1 Respondent has been disciplined and the terms and conditions of probation, to all veterinary and
2 animal health technician employees, and to any preceptor, intern or extern involved in his
3 veterinary practice. Within fifteen (15) days of the effective date of this Decision, Respondent
4 shall cause his employees to report to the Board in writing, acknowledging the employees have
5 read the Stipulated Settlement and Disciplinary Order and Decision in the case and understand
6 Respondent's terms and conditions of probation. Relief veterinarians notify employees
7 immediately.

8 **7. Owners And Officers (Corporations or Partnerships): Knowledge of**
9 **The Law.** Respondent shall provide, within thirty days after the effective date of the Decision,
10 signed and dated statements from the owners, officers, or any owner or holder of ten percent
11 (10%) or more of the interest in Respondent or Respondent's stock, stating said individuals have
12 read and are familiar with federal and state laws and regulations governing the practice of
13 veterinary medicine.

14 **8. Posted Notice of Suspension.** If suspension is ordered, Respondent shall
15 post a notice of the Board's Order of Suspension, in a place clearly visible to the public. Said
16 notice, provided by the Board, shall remain so posted during the entire period of actual
17 suspension.

18 **9. Tolling of Probation.** Should respondent leave California to reside or
19 practice outside this State, respondent must notify the Board in writing of the dates of departure
20 and return in his Quarterly Reports. Periods of residency or practice outside the State shall not
21 apply to reduction of the probationary terms.

22 If Respondent resides out of state upon effective date of the decision, he must
23 comply with the following conditions only: quarterly reports and interviews, tolling of probation,
24 psychiatric evaluation, rehabilitation program, biological fluid samples, cost recovery and fines.
25 If Respondent returns to California he must comply or be subject to all probationary conditions
26 for the period of probation.

27 **10. Violation of Probation.** If Respondent violates probation in any respect,
28 the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation

1 and carry out the disciplinary order that was stayed. If an accusation or petition to revoke
2 probation is filed against Respondent during probation, or if the Attorney General's office has
3 been requested to prepare any disciplinary action against Respondent's license, the Board shall
4 have continuing jurisdiction until the matter is final, and the period of probation shall be
5 extended until the matter is final.

6 **11. Completion of Probation.** Upon successful completion of probation,
7 Respondent's license will be fully restored.

8 **12. No Management or Administration.** Respondent shall not manage or be
9 the administrator of any veterinary hospital in California.

10 **13. Psychological Evaluation.** Within thirty (30) days of the effective date
11 of this Decision, and on a periodic basis as may be required by the Board or its designee,
12 respondent shall undergo a psychiatric evaluation by either Dr. Mark Kalish; a Board-approved
13 psychotherapist (psychiatrist or psychologist) at Serenity Lane in Oregon; or by a Board-
14 appointed approved psychotherapist (psychiatrist or psychologist), to determine respondent's
15 ability to practice veterinary medicine safely, who shall furnish a psychological report to the
16 Board or its designee. All costs shall be borne by respondent.

17 If the psychotherapist (psychiatrist or psychologist) recommends and the Board or
18 its designee directs psychotherapeutic treatment, respondent shall, within thirty (30) days of
19 written notice of the need for psychotherapy, submit the name and qualification of one or more
20 psychotherapists of respondent's choice to the Board for its prior approval. Upon approval of the
21 treating psychotherapist by the Board, respondent shall undergo and continue psychotherapy until
22 further notice from the Board. Respondent shall have the treating psychotherapist submit
23 quarterly written reports to the Board. All costs shall be borne by respondent.

24 As of the effective date of the Decision, respondent shall not engage in the
25 practice of veterinary medicine until notified in writing by the Board of this determination that
26 respondent is mentally fit to practice safely. If recommended by the psychotherapist (psychiatrist
27 or psychologist) and approved by the Board or its designee, respondent shall be barred from
28 practicing veterinary medicine until the treating psychotherapist recommends, in writing and

1 stating the basis therefor, that respondent can safely practice veterinary medicine, and the Board
2 approves said recommendation. All costs shall be borne by respondent.

3 **14. Rehabilitation Program - Drug.** Within thirty (30) days of the effective
4 date of this Decision, Respondent shall submit in writing a drug rehabilitation program in which
5 Respondent shall participate for the duration of probation to the Board for its prior approval.
6 Respondent shall comply with the recovery plan recommended by the rehabilitation program.
7 Respondent may participate in a rehabilitation program in Oregon, such as Serenity Lane or its
8 equivalent. Respondent shall have the rehabilitation program submit quarterly written reports to
9 the Board. In the quarterly written reports to the Board, Respondent shall provide documentary
10 evidence of continuing satisfactory participation in this program. All costs shall be borne by
11 Respondent.

12 **15. Submit Biological Fluid Samples.** Respondent shall immediately submit
13 to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There
14 will be limited confidentiality in test results; positive test results will be immediately reported to
15 the Board and to Respondent's current employer.

16 **16. Abstain from Controlled Substances.** Respondent shall completely
17 abstain from the personal use or possession of controlled substances, as defined in the California
18 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4022 of the
19 Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a
20 bonafide illness.

21 **17. DEA Registration.** Respondent shall surrender his DEA Registration and
22 provide proof of surrender. If Respondent's DEA Registration has already been revoked,
23 Respondent shall provide proof of said revocation and this condition of probation will be
24 withdrawn.

25 **18. Fine.** Within 30 days of the effective date of this Decision, Respondent
26 shall pay to the Board a fine in the amount of \$1,000 pursuant to Business and Professions Code
27 sections 4875 and 4883.

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1 19. **Cost Recovery.** Pursuant to Section 125.3 of the California Business and
2 Professions Code, within thirty (30) days of the effective date of this decision, Respondent shall
3 pay to the Board its enforcement costs including investigation, hearing and probationary
4 monitoring in the reduced amount of \$5,000.00. Failure to pay this amount to the Board shall
5 result in automatic revocation of the license forthwith, without further notice of an opportunity to
6 be heard.

7 20. **Supervised Practice.** Respondent shall practice only under the
8 supervision of a veterinarian approved by the Board for the first year of probation immediately
9 following a suspension. The supervision directed may be continuous supervision, substantial
10 supervision, partial supervision, or supervision by daily review, as deemed necessary by the
11 Board. All costs involved with practice supervision shall be borne by Respondent.

12 Within thirty (30) days of the effective date of the Decision, Respondent shall
13 have his/her supervisor submit a report to the Board in writing stating the supervisor has read the
14 Decision in Case Number AV 2002 8. Should respondent change employment, respondent shall
15 have his/her new supervisor, within fifteen (15) days after employment commences, submit a
16 report to the Board in writing stating the supervisor has read the Decision in Case Number AV
17 2002 8.

18 Respondent's supervisor shall, on a basis to be determined by the Board, review
19 and evaluate all or a designated portion of patient records of those patients for whom respondent
20 provides treatment or consultation during the period of supervised practice. The supervisor shall
21 1) review respondent's maintenance of necessary and appropriate records and chart entries and
22 cross check entries in a log for controlled substances with individual patient records; and 2)
23 review respondent's compliance with existing statutes and regulations governing the practice of
24 veterinary medicine.

25 Respondent's supervisor shall file monthly reports with the Board. These reports
26 shall be in a form designated by the Board and shall include a narrative section where the
27 supervisor provides his/her conclusions and opinions concerning the issues described above and
the basis for his/her conclusions and opinions. Additionally, the supervisor shall maintain and

1 submit with his/her monthly reports a log designating the patient charts reviewed, the date(s) of
2 service reviewed, and the date upon which the review occurred.

3 If respondent is an employee rather than a veterinary hospital owner, the
4 supervisor shall additionally notify the Board of the dates and locations of all employment of
5 respondent, during each month covered by his/her report.

6 ACCEPTANCE

7 I have carefully read the Stipulated Settlement and Disciplinary Order. I
8 understand the stipulation and the effect it will have on my Veterinary License. I enter into this
9 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
10 to be bound by the Decision and Order of the Veterinary Medical Board.

11 DATED: May 1, 2004

12 
13 DANIEL KOLLER, DVM
14 Respondent

15

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Veterinary Medical Board of the Department of Consumer
19 Affairs.

20 DATED: May 14, 2004

21 BILL LOCKYER, Attorney General
22 of the State of California

23 
24 RITA LANE MBEDELLIN
25 Deputy Attorney General

26 Attorneys for Complainant

27
28 SD2001AD0986 [2/5/04]

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OAH No. L-2001-120388

Veterinary License No. 5490

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Susan M. Geranen (Complainant) brings this Accusation solely in her
2 official capacity as the Executive Officer of the Veterinary Medical Board, Department of
3 Consumer Affairs.

2. On or about June 24, 1974, the Veterinary Medical Board issued
3 Veterinary License Number 5490 to Daniel Koller, DVM (Respondent). Said license was
4 revoked effective April 11, 1979. Respondent petitioned for reinstatement three times, all of
5 which were denied. In July 1984, Respondent was granted a probationary license and put on
6 probation for five years. Respondent completed his probation in September 1999. The
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1 Veterinary License was in full force and effect at all times relevant to the charges brought herein
2 and will expire on January 31, 2003, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Veterinary Medical Board (Board),
5 under the authority of the following sections of the Business and Professions Code (Code).

6 4. Section 4022 of the Code provides, in pertinent part, that a dangerous drug
7 is any drug that by federal or state law can be lawfully dispensed only on prescription or
8 furnished pursuant to Section 4006.

9 5. Section 4853(a) of the Code provides, in pertinent part, that all premises
10 where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches
11 thereof is being practiced shall be registered with the Board.

12 6. Section 4875 of the Code provides, in pertinent part, that the Board of
13 Veterinary Medicine may revoke or suspend the license of any person to practice veterinary
14 medicine, or any branch thereof, in this state for any causes provided in the Veterinary Medicine
15 Practice Act (Bus. & Prof. Code, § 4800, et seq.). In addition, the Board has the authority to
16 assess a fine not in excess of \$5,000 against a licensee for any of the causes specified in section
17 4883 of that code. Such fine may be assessed in lieu of, or in addition to, a suspension or
18 revocation.

19 7. Section 4883 of the Code states:

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

22 . . .
23 (c) Violation or attempting to violate, directly or indirectly, any of the provisions
24 of this chapter [the Veterinary Medicine Practice Act].

25 . . .
26 (g) Unprofessional conduct, that includes, but is not limited to, the following:

27 . . .
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(2) (A) The use of or prescribing for or administering to himself or herself, any controlled substance.

(B) The use of any of the dangerous drugs specified in Section 4022 or of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a person licensed under this chapter [the Veterinary Medicine Practice Act], or to any other person or to the public, or to the extent that the use impairs the ability of the person so licensed to conduct with safety the practice authorized by the license.

(3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances.

8. Health and Safety Code Section 11154 provides that except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

9. Health and Safety Code Section 11158(a) provides in pertinent part that except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

10. Health and Safety Code Section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code Section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

12. Title 16, California Code of Regulations ("CCR") section 2030(f)(6) provides in pertinent part that all drugs and biologicals shall be maintained, administered, dispensed and prescribed in compliance with state and federal laws.

1 13. Title 21, Code of Federal Regulations ("CFR") section 1301.75(b)
2 provides in pertinent that controlled substances listed in Schedules II, III, IV, and V shall be
3 stored in a securely locked, substantially constructed cabinet.

4 14. CFR section 1304.22(a) provides in pertinent part that each person
5 registered or authorized to manufacture controlled substances shall maintain records with the
6 following information:

7 (2) For each controlled substance in finished form,

8 (i) The name of the substance;

9 (ii) Each finished form (e.g., 10-milligram tablet or 10-milligram
10 concentration per fluid ounce or milliliter) and the number of units or volume of
11 finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter
12 vial);

13 . . .
14 (iv) The number of units of finished forms and/or commercial containers
15 acquired from other persons, including the date of and number of units and/or
16 commercial containers in each acquisition to inventory and the name, address, and
17 registration number of the person from whom the units were acquired;

18 . . .
19 (vii) The number of commercial containers distributed to other persons,
20 including the date of and number of container in each reduction from inventory,
21 and the name, address, and registration number of the person to whom the
22 containers were distributed;

23 . . .
24 (ix) The number of units of finished forms and/or commercial containers
25 distributed or disposed of in any other manner by the registrant (e.g., by
26 distribution of complimentary samples or by destruction), including the date and
27 manner of distribution or disposal, the name, address, and registration number of

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the person to whom distributed, and the quantity in finished form distributed or disposed.

3 15. CFR section 1304.22(c) provides in pertinent part that each person
4 registered or authorized to dispense controlled substances shall maintain records with the same
5 information required of manufacturers pursuant to paragraph (a)(2) (i), (ii), (iv), (vii) and (ix) of
6 this section. In addition, records shall be maintained of the number of units or volume of such
7 finished form dispensed, including the name and address of the person to whom it was dispensed,
8 the date of dispensing, the number of units or volume dispensed, and the written or typewritten
9 name or initials of the individual who dispensed or administered the substance on behalf of the
10 dispenser.

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

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

18. "DRUGS"

21 "Telazol" is the Brand name of the drug "Tiletamine." "Tiletamine" is a
22 pharmaceutical related to "Ketamine" and "PCP" which is used almost exclusively for
23 anaesthetizing animals by veterinarians. It is primarily sold compounded with "Zolazepam" (a
24 benzodiazepine) as a powder/tablet which is reconstituted with 0.9% saline solution and then
25 injected. "Tiletamine" is a controlled substance and is listed as a Schedule III drug as designated
26 by Title 21, Code of Federal Regulations, section 1308.13(c)(13).

27 ///
28 ///

FIRST CAUSE FOR DISCIPLINE

(Using and Administering a Controlled Substance)

3 19. Respondent is subject to disciplinary action under Code section
4 4883(g)(2)(A) for unprofessional conduct in that Respondent illegally used and administered to
5 himself a controlled substance. The circumstances are as follows:

6 a. On October 27, 2001, paramedics responded to an emergency call
7 at respondent's home located at 12897 Corbett Court, San Diego. Respondent's 16 year
8 old daughter told paramedics that her mother and respondent might have taken drugs.
9 Paramedics found Mrs. Ellen Koller, lying unconscious on the floor in the doorway to the
10 master bedroom. Initially, Mrs. Koller was not breathing, had pin point pupils and had a
11 fresh injection site in her left arm, which was bleeding. Paramedics determined that Mrs.
12 Koller was under the influence of a narcotic or narcotic type drug and was experiencing a
13 possible narcotic overdose. After treatment with Narcan, Mrs. Koller gradually regained
14 consciousness and was transported to the hospital.

15 b. Paramedics found respondent on the bed in the master bedroom.
16 He was initially unconscious but was partially awakened by touch. Paramedics found
17 that respondent initially had pin point pupils and blood from a fresh injection site in his
18 right arm. Paramedics found a used syringe next to respondent on a bedside table. Police
19 Officers found in respondent's pant pocket a vial which was labeled Telazol, which
20 contained a mixture of Tiletamine HCL and Zolazepam HCL. The vial contained a
21 rubber top. The liquid could only be extracted using a needle and syringe. The rubber
22 top on the vial recovered from respondent had been punctured and 3/4 of the liquid was
23 gone. The vial was clearly labeled "for animal use only" and "not for human use." Upon
24 the paramedics initial assessment and questioning of respondent, respondent stated that
25 he and his wife had taken narcotics.

26 c. The paramedics on the scene determined that both respondent and
27 Mrs. Koller appeared to be under the influence of a narcotic. The paramedics stated that

1 they believed that respondent first injected his wife with a narcotic and then injected
2 himself.

3 d. On October 27, 2001, a blood sample was taken from respondent
4 by the San Diego Police Department which later tested positive for Zolazepam.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Use of a Dangerous Drug to an Extent or in a
7 Manner to be Dangerous or Injurious to Himself and Others)**

8 20. Respondent is subject to disciplinary action for unprofessional conduct
9 under Code section 4883(g)(2)(B) in that respondent used a dangerous drug, Telazol, a Schedule
10 III controlled substance under Title 21, Code of Federal Regulations, section 1308.13(c)(13), to
11 the extent and in a manner as to be dangerous and injurious to himself and to others as set forth
12 in paragraph 19 above, which is realleged and incorporated herein by reference. Not only did
13 respondent use a dangerous drug in a manner dangerous to himself, but he provided a dangerous
14 drug to his wife in a manner to be both dangerous and injurious to her, wherein she overdosed,
15 was not breathing and had to receive emergency medical treatment as set forth in paragraph 19
16 above, which is realleged and incorporated herein by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct: Violation of Controlled Substance Laws)**

19 21. Respondent is subject to disciplinary action for unprofessional conduct
20 under Code section 4883(g)(3) in that he administered a controlled substance to himself in
21 violation of Health and Safety Code Section 11170 as set forth in paragraph 19 above, which is
22 realleged and incorporated herein by reference.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct: Violation of Controlled Substance Law)**

25 22. Respondent is subject to disciplinary action for unprofessional conduct
26 under Code section 4883(g)(3) in that he administered and furnished a controlled substance to
27 himself and his wife in violation of Health and Safety Code Section 11171 as set forth in
28 paragraph 19 above, which is realleged and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Controlled Substance Law)

3 23. Respondent is subject to disciplinary action for unprofessional conduct
4 under Code section 4883(g)(3) in that he administered, dispensed and furnished a controlled
5 substance to himself and his wife in violation of Health and Safety Code Section 11154 as set
6 forth in paragraph 19 above, which is realleged and incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Controlled Substance Law)

9 24. Respondent is subject to disciplinary action for unprofessional conduct
10 under Code section 4883(g)(3) in that he dispensed a Schedule III controlled substance to himself
11 and his wife without a valid prescription in violation of Health and Safety Code Section 11158(a)
12 as set forth in paragraph 19 above, which is realleged and incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Federal Statutes)

15 25. Respondent is subject to disciplinary action for unprofessional conduct
16 under Code section 4883(g)(3) and CCR section 2030(f)(6) in that he has violated federal statutes
17 regulating controlled substances in that respondent failed to store controlled substances located at
18 his home in a securely locked, substantially constructed cabinet in violation of CFR section
19 1301.75(b). The circumstances are as follows:

1. Four capsules of Dexfenfluramine.

2. 16 tablets of Diphenoxylate.
3. One tablet of Diazepam.
4. Ten ml liquid Nandrolone.
5. One full bottle of Lomotil.
6. One vial of Telazol that was taken from respondent's pant pocket earlier that day.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Federal Statutes)

9 26. Respondent is subject to disciplinary action for unprofessional conduct
10 under Code section 4883(g)(3) and CCR section 2030(f)(6) in that he has violated federal statutes
11 regulating controlled substances in that respondent failed to maintain records regarding the
12 controlled substances in his possession (as listed in paragraph 25 above and realleged and
13 incorporated herein) including a running inventory, the number of units dispensed, name and
14 address of the person to whom it was dispensed, the date of dispensing and the initials of the
15 individual who dispensed or administered the substance in violation of CFR sections
16 1304.22(a)(2) and 1304.22(c). The circumstances are as follows:

a. On or about October 27, 2001, when detectives executed the search warrant on respondent's home, they found controlled substances that were laying around the home and were not stored in a securely locked, substantially constructed cabinet as set forth in paragraph 25 above, which is realleged and incorporated herein by reference. During the search of respondent's home, detectives looked for, but could not find any animal patient charts, animal records or medical charts by respondent. Detectives also did not find any controlling logs indicating the purchase of, use of, or storage of the controlled substances recovered from respondent's home.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of State Statutes)

27 27. Respondent is subject to disciplinary action for unprofessional conduct
28 under Code section 4883(g)(3) in that he has violated state statute by possessing dangerous drugs

1 at his home without valid prescriptions in violation of Code section 4022. The circumstances are
2 as follows:

3 a. On or about October 27, 2001, when the San Diego Police
4 Department executed a search warrant on respondent's home located at 12897 Corbett
5 Court, San Diego, detectives found the following dangerous drugs at respondent's home
6 without any legal prescriptions:

- 7 1. Seven Diclofenac tablets.
- 8 2. 20 tablets of 500 mg Naproxen.
- 9 3. Seven capsules of Amoxicillin 500 mg.
- 10 4. 39 tablets of Montelukast.
- 11 5. Two tubes of ointment containing Optimmune.
- 12 6. 63 ½ tablets of Prednisone.
- 13 7. 7 tablets of Bactrim.
- 14 8. 37 tablets of Sulfadimethoxine.
- 15 9. 2 capsules of Ampicillin.
- 16 10. One vial of injectable ECP solution.
- 17 11. One vial of injectable Dexamethasone solution.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Violations of Regulations Adopted by the Veterinary Medical Board)**

20 28. Respondent is subject to disciplinary action under Code section 4883(c)
21 for violating the provisions of this chapter in that respondent possessed and maintained
22 dangerous drugs and controlled substances at his home located at 12897 Corbett Court, San
23 Diego, without having registered his home address with the Board as a premise where veterinary
24 medicine could be stored in violation of Code section 4853(a). The circumstances are as follows:

25 a. On or about October 27, 2001, when the San Diego Police
26 Department executed a search warrant on respondent's home located at 12897 Corbett
27 Court, San Diego, detectives found therein, dangerous drugs and controlled substances
28 (identified above in paragraphs 25 and 27, which are realleged and incorporated herein by

1 reference). Respondent does not have a premise permit from the Board to keep
2 dangerous drugs or controlled substances at his home located at 12897 Corbett Court, San
3 Diego.

4 DISCIPLINE CONSIDERATIONS

5 29. To determine the degree of discipline, if any, to be imposed on
6 Respondent, Complainant alleges that on or about April 11, 1979, in a prior disciplinary action
7 entitled In the Matter of the Accusation Against Daniel Koller, DVM before the Veterinary
8 Medical Board, in Case Number 76\77-1. Respondent's license was revoked for cruelty to
9 animals; aiding and abetting the unlicensed practice of veterinary medicine and the conviction of
10 a crime substantially related to the qualifications, functions or duties of veterinary medicine.
11 That decision is now final and is incorporated by reference as if fully set forth.

12 DISCIPLINE CONSIDERATIONS

13 30. To determine the degree of discipline, if any, to be imposed on
14 Respondent, Complainant alleges that on or about June 23, 1977, in a prior criminal proceeding
15 entitled People v. Daniel Koller in the Superior Court for the County of Monterey, respondent
16 was found guilty after a jury trial of a single violation of Penal Code Section 597(b) (Cruelty to
17 Animals) and was sentenced to 100 days in County Jail on this count. Respondent was also
18 convicted of a misdemeanor violation of Business and Professions Code Section 4825 (Aiding
19 and Abetting Unlicensed Practice). Respondent was fined \$200 on this count. The record of the
20 criminal proceeding is incorporated as if fully set forth.

21 PRAYER

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

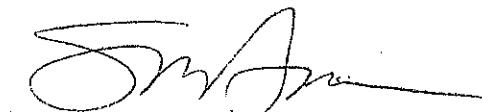
24 1. Revoking or suspending Veterinary License Number 5490, issued to
25 Daniel Koller, DVM;

26 2. Ordering Daniel Koller, DVM to pay the Veterinary Medical Board the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

1 3. Assessing a fine against Daniel Koller, DVM not in excess of \$5,000 for
2 each and every cause for disciplinary action specified in Code section 4883 of which respondent
3 is found to have violated; and

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

5 DATED: 8/29/02



6
7 SUSAN M. GERANEN
8 Executive Officer
9 Veterinary Medical Board
10 Department of Consumer Affairs
11 State of California
12 Complainant

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14 2Accusation.wpt 10/19/01
15 rlm

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