

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

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

DANIEL KOLLER, DVM

Veterinary License No. VET 5490

Respondent.

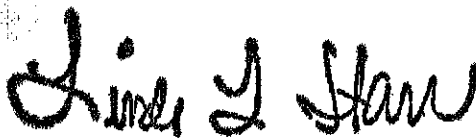
) Case No. AV 2007-31
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) OAH No. 2008020128
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DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the Veterinary Medical Board, Department of Consumer Affairs as its Decision in the above-entitled matter.

This Decision shall become effective on November 27, 2008.

IT IS SO ORDERED October 28, 2008.



Linda L. Starr, Board President
FOR THE VETERINARY MEDICAL BOARD (VMB)
DEPARTMENT OF CONSUMER AFFAIRS

Walt B. Smith

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

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

DANIEL KOLLER, DVM
Portland, OR 97220

Veterinary License No. VET 5490

Respondent.

Case No. AV 2007-31

OAH No. 2008020128

PROPOSED DECISION

On June 23, 2008, this matter was heard before Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings, State of California, in Sacramento, California.

Daniel Koller, DVM, JD., appeared and represented himself.

Elena L. Almanzo, Deputy Attorney General, appeared on behalf of the Executive Officer, Veterinary Medical Board, Department of Consumer Affairs, State of California.

Evidence was received, the record was closed and the matter was submitted on June 23, 2008.

FACTUAL FINDINGS

1. On June 24, 1974, the Board of Examiners in Veterinary Medicine (now the Veterinary Medical Board) issued veterinarian license number VET 5490 to Daniel Koller (respondent).

2. On April 11, 1979, the Board revoked respondent's license. Respondent's license was reinstated effective May 27, 1984, and placed on probation for five years.

3. On October 20, 2004, pursuant to a Stipulated Settlement and Disciplinary Order adopted by the Board as its Decision in disciplinary action number AV 20028 (2004 decision), respondent's license was revoked effective November 19, 2004.¹ The revocation was stayed and respondent was placed on probation for four years on terms and conditions. Respondent's license expired on January 31, 2005, and was not renewed.

4. On June 6, 2008, the Board filed a First Amended Accusation and Petition to Revoke Probation (accusation). The accusation alleges that respondent's license is subject to discipline due to his violations of the terms and conditions of the probation imposed on November 19, 2004, and due to an out-of-state license discipline. Respondent timely filed a Request for Hearing and Notice of Defense, and the instant hearing was held pursuant to Government Code section 11500 et seq.

Out of State Discipline

5. Respondent is a licensed veterinarian in the State of Oregon. On July 31, 2006, the Oregon Veterinary Medical Examining Board (OVMEB) found respondent in violation of the following sections of the Oregon Veterinary Practice Act:

a) "Licensee failed to create and maintain adequate patient records as required under OAR 875-010-0060 (1).

b) Licensee failed to advise clients of home care of follow-up treatment required after particular diagnosis or treatment as required under OAR 875-010-0060 (9)."

Respondent and the OVEMB entered into a Stipulated Agreement and Final Order on August 24, 2006, wherein respondent agreed that he failed to produce and maintain proper patient records in nine cases. He agreed that he did not document that he provided instructions for home care or follow-up treatment after particular diagnosis or treatment in seven cases. Respondent agreed that this conduct constituted violations of OAR 875-010-0060 (1) and OAR 875-010-0060 (9). Respondent agreed that violations of these regulations constituted grounds for discipline against him under Oregon Revised Statute 686.120. Respondent agreed to pay a \$2,000 civil penalty within 30 days. The OVEMB adopted the Stipulated Agreement and Final Order on August 28, 2006.

¹ Respondent admitted in the Stipulated Settlement and Disciplinary Order that he illegally used and administered to himself a controlled substance, Telazol, and that he used this drug in a manner dangerous to himself and in violation of controlled substance laws.

6. At hearing, respondent and a witness explained that respondent owned and operated several veterinary clinics in the state of Oregon and that the OVEMB had instituted numerous new record-keeping regulations in 2006. Respondent and his employees had failed on several occasions to timely implement the new regulations, such as regulations requiring that a patient's temperature and weight be documented on the chart. As a result, some patient charts were not completely documented in accordance with the new regulations. Additionally, some receptionists failed to insist that clients take home care instructions with them when they departed the clinic. Respondent was vicariously liable for the acts of his employees and therefore took responsibility for their lapses. Respondent characterized his violations of Oregon law as very minimal and as violations which would not even warrant a citation by the State of California. He has since taken steps to computerize the patient charts in his veterinary clinics and to encourage his veterinarians to dictate charts. He has taken steps to make sure that patients leave the clinics with home care instructions.

Violations of Probation

7. Failure to Obey All Laws. The Board's 2004 decision imposes terms and conditions of probation upon respondent. Condition 1 of the probationary terms states that respondent shall obey all federal and state laws and regulations substantially related to the practice of veterinary medicine. Respondent admitted violations of OAR 875-010-0060 (1) and OAR 875-010-0060 (9), and also admitted that violations of these regulations constitute grounds for discipline against him under Oregon Revised Statute 686.120. Thus, it is uncontroverted that respondent violated Condition 1.

8. Failure to Submit Quarterly Reports. Condition 2 of the probationary terms states, in pertinent part, that respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms provided by the Board, stating whether there is compliance with all terms and conditions of probation. Condition 2 is not tolled by respondent's residence or practice out of State. Respondent submitted an initial quarterly report for January 5, 2005, which was received by the Board on March 31, 2005. He failed to submit quarterly reports thereafter. He testified that this was partially his fault because he had failed to set up a system to alert himself to the fact that quarterly reports were due. However, he also blamed the Board for failing to send him notices of delinquent quarterly reports and for sending the initial notice of terms and conditions of probation to an address he had vacated in 2002. Although he had not changed his address with the Board, he believed that since he had numerous communications with the Board, communications should have been sent to him at his new address in Oregon, rather than at his erroneous address of record on file with the Board. On February 8, 2005 the Board sent respondent a letter at his Portland, Oregon address notifying him he was out of compliance with probation for failure to submit quarterly reports. He responded to this letter by filing the March 31, 2005 quarterly report. However, despite receiving this notice that he was required to file quarterly reports, he did not file subsequent quarterly reports. He

explained that he called the Board and asked for the appropriate forms and did not receive them, perhaps because the Board sent them to the wrong address.

Apparently, respondent expected to be periodically reminded when every quarterly report was due. He implied that the Board had a practice of alerting other probationers when they failed to file quarterly reports, and that the Board has failed to alert him out of malice. Respondent is in his late 50's, is a veterinarian with a thriving business and is an attorney actively practicing law in the State of California. He entered into the terms and conditions of probation knowingly and received at least one reminder of delinquent quarterly reports. His position is untenable and demonstrates an unwillingness to take responsibility for compliance with probation.

Respondent also blamed the Board for his failure to renew his license. He testified that he did not receive a license renewal form and he assumes the Board sent it to the wrong address. He claimed he never had an obligation to file his new address with the Board because he has been in litigation with the Board for 30 years and it should know his address.

9. Failure to Participate in an Ongoing Rehabilitation Program. Condition 14 of the probationary terms states:

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

Between February and June 2005, respondent participated in a drug rehabilitation program through Acadia Northwest LLC in Portland, Oregon. Acadia provided quarterly reports to the Board that commented upon respondent's progress in the program. On June 22, 2005 the Board received a Treatment Discharge Report from Acadia. The report stated:

This client has successfully completed treatment, had shown active participation in all treatment activities and is denying any current illicit drug use. Finally the client has a relapse plan, discharge plan and has provided 90 days of illicit free UA's [sic].

Respondent argued at hearing that his successful completion of the Acadia program in June 2005 relieved him of any further responsibilities to comply with condition 14. The Board maintains that condition 14 requires respondent to participate in an ongoing rehabilitation program and to have that program submit quarterly reports to the Board. The language of condition 14 is clear in that respondent is required to participate in a drug rehabilitation program and to have that program report to the Board for the duration of probation. Respondent's probationary term was set to expire November 19, 2008. Therefore, this condition required respondent to participate in ongoing drug rehabilitation, not just for the five months respondent devoted to Acadia, but for three and half additional years. Again, respondent blamed the Board for not advising him if the Board felt he was in violation of this condition. He expected the Board to contact him and alert him that a rehabilitation program was not submitting the reports required by condition 14. Such an alert would have let him know that the Board expected the rehabilitation program to continue for the duration of probation. For the reasons cited previously, respondent's position is without merit.

10. It is telling that respondent, as of the date of the hearing, has not filed the delinquent quarterly reports. And, he has not provided evidence that he is in a continuing drug rehabilitation program. He was on notice from at least December 2007, when a petition to revoke probation was served on him, that he was delinquent in his quarterly reports and that the Board required him to remain in a rehabilitation program during the pendency of his probation.

11. The Board established that the reasonable and necessary costs of investigation and prosecution of the Accusation were \$4,741.25. Respondent did not maintain that he was financially unable to reimburse the Board for these costs.

LEGAL CONCLUSIONS

1. Business and Professions Code² section 4875 provides in pertinent part, that the Board may revoke or suspend the license of any person to practice veterinary medicine in this state for any causes provided in the Veterinary Medicine Practice Act (Business and Professions Code, section 4800 et seq.). The Board also has the authority to assess a fine not in excess of \$5,000 against a licensee for any of the causes specified in section 4883. Such fine may be assessed in lieu of, or in addition to, a suspension or revocation.

2. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with the disciplinary action during the period within which the license may be renewed, restored, re-issued or reinstated. Under section 4843.5, the Board may renew an

² All statutory references are to the California Business and Professions Code unless otherwise noted.

expired license at any time within five years after expiration. As set forth in the Factual Findings, respondent's license expired on January 31, 2005.

3. Section 4883 states, in pertinent part, that the Board may deny, revoke, or suspend a license or assess a fine, not in excess of \$5,000, as provided in section 4875 for "the revocation, suspension, or other discipline by another state or territory of a license or certificate to practice veterinary medicine in that state or territory...." As set forth in Factual Findings 5 and 6, cause exists to discipline respondent's license, or assess a fine, due to respondent's license discipline by the State of Oregon on April 28, 2006.

4. Condition 10 of the terms of respondent's probation states, in pertinent part, that if respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. The disciplinary order that was stayed pursuant to the Board's decision and order was revocation of respondent's license. As set forth in Factual Findings 6 through 10, cause was established to implement condition 10 of the terms of respondent's probation, by virtue of his violations of conditions 1, 2 and 14 of probation.

5. Section 125.3 provides, in pertinent part, that a Board may request the Administrative Law Judge to direct a licensee 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. As set forth in Factual Finding 11, cause was established to direct respondent to pay the reasonable and necessary costs of investigation and prosecution of the Accusation in amount of \$4,741.25.


6. As set forth in the Factual Findings, particularly Factual Finding 10, respondent's disregard of three of the terms and conditions of his probation, his hubris and his failure to immediately mitigate his omissions (by filing the delinquent reports and enrolling in an ongoing drug rehabilitation program) do not bode well for future compliance with his probation to the Board. His out-of-state discipline, although it arose from minor record-keeping violations, again illustrates his casual approach to compliance with regulation. Respondent has been disciplined by the California Board twice before this instant action. His veterinary license has now been disciplined by the Oregon Board. He has been unable or unwilling to comply with his probationary conditions in California and he presented no evidence to provide assurances that he will be compliant in the future. Accordingly, it is not now in the public interest to permit respondent to retain his California license.

ORDER

The stayed revocation of Veterinary License Number VET 5490, issued to Daniel Koller, is lifted and the order of revocation is reimposed.

Daniel Koller, DVM, shall pay the Board, or its designee, within 30 days of the effective date of this decision, the costs of its investigation and prosecution of the Accusation in the sum of \$4,741.25.

DATED: July 21, 2008



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

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

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

DANIEL KOLLER, DVM
3150 N.E. 82nd Avenue
Portland, OR 97220

Veterinary License No. VET 5490

Respondent.

Case No. AV 2007-31

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

Complainant alleges:

PARTIES

1. Susan M. Geranen ("Complainant") brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Veterinary Medical Board ("Board"), Department of Consumer Affairs.

2. On or about June 24, 1974, the Board issued Veterinary License Number VET 5490 (hereinafter "license") to Daniel Koller, DVM ("Respondent"). On April 11, 1979, Respondent's license was revoked. Respondent's license was reinstated effective May 27, 1984, and placed on probation for five (5) years. On October 20, 2004, pursuant to the Stipulated Settlement and Disciplinary Order adopted by the Board as its Decision in the disciplinary action titled *In the Matter of the Accusation Against: Daniel Koller, DVM*, Case Number AV 2002 8,

1 the Board ordered that Respondent's license be revoked effective November 19, 2004. The
2 revocation was stayed and Respondent was placed on probation for four (4) years on terms and
3 conditions, as more particularly set forth in paragraphs 8 through 16 below. Respondent's
4 license expired on January 31, 2005.

5 **STATUTORY PROVISIONS**

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

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

18 5. Code section 4883 states, in pertinent part:

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

21

22 (1) The revocation, suspension, or other discipline by another state or
23 territory of a license or certificate to practice veterinary medicine in that state or
territory . . .

24 6. Code section 125.3 provides, in pertinent part, that a Board may request
25 the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

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1 paragraph 7 above.

2 **SECOND CAUSE TO REVOKE PROBATION**

3 **(Failure to Submit Quarterly Reports)**

4 13. Condition 2 of Respondent's probation states, in pertinent part, that
5 Respondent shall report quarterly to the Board or its designee, under penalty of perjury, on forms
6 provided by the Board, stating whether there has been compliance with all terms and conditions of
7 probation.

8 14. Condition 9 of Respondent's probation states, in pertinent part, that if
9 Respondent resides out of state upon the effective date of the decision, he must comply with the
10 following conditions only: quarterly reports and interviews, tolling of probation, psychiatric
11 evaluation, rehabilitation program, biological fluid samples, cost recovery, and fines.

12 15. Respondent's probation is subject to revocation in that he has failed to
13 submit quarterly reports to the Board, with the exception of his quarterly report for January 5,
14 2005 (Respondent's report was received by the Board on March 31, 2005).

15 **THIRD CAUSE TO REVOKE PROBATION**

16 **(Failure to participate in ongoing Rehabilitation Program)**

17 16. Condition 14 of Respondent's probation states: "Within thirty (30) days of
18 the effective date of this Decision, Respondent shall submit in writing a drug rehabilitation
19 program in which Respondent shall participate for the duration of probation to the Board for its
20 prior approval. Respondent shall comply with the recovery plan recommended by the
21 rehabilitation program. Respondent may participate in a rehabilitation program in Oregon, such
22 as Serenity Lane or its equivalent. Respondent shall have the rehabilitation program submit
23 quarterly reports to the Board. In the quarterly written reports to the Board, Respondent shall
24 provide documentary evidence of continuing satisfactory participation in this program. All costs
25 shall be borne by Respondent."

26 17. Condition 9 of Respondent's probation states, in pertinent part, that if
27 Respondent resides out of state upon the effective date of the decision, he must comply with the
28 following conditions only: quarterly reports and interviews, tolling of probation, psychiatric

1 evaluation, rehabilitation program, biological fluid samples, cost recovery, and fines.

2 18. Respondent's probation is subject to revocation in that the last
3 documentation the Board received indicating Respondent's continued participation in a
4 rehabilitation program was June 22, 2005. Respondent has failed to provide documentation of his
5 continued participation in a rehabilitation program for the duration of his probation as required
6 under condition number 14.

7 **PRAYER**

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

10 1. Revoking or suspending Veterinary License Number VET 5490, issued to
11 Daniel Koller, DVM;


12 2. Assessing a fine against Daniel Koller, DVM not in excess of \$5,000 for
13 any of the causes specified in Business and Professions Code section 4883;

14 3. Revoking probation and reimposing the order of revocation of Veterinary
15 License Number VET 5490, issued to Daniel Koller, DVM;

16 4. Ordering Daniel Koller, DVM to pay the Veterinary Medical Board the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

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

20 DATED: 6/6/08

21 
22 SUSAN M. GERANEN
23 Executive Officer
24 Veterinary Medical Board
25 Department of Consumer Affairs
26 State of California

27 Complainant

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