

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Petition Against:

DANIEL KOLLER, D.V.M.
12897 Corbett Court
San Diego, CA 92130

OAH No. L2001120388

Veterinary License No. 5490

Respondent.

**INTERIM ORDER PURSUANT TO
BUSINESS AND PROFESSIONS CODE SECTION 494**

TO: DANIEL KOLLER, D.V.M., AND HIS ATTORNEY, CARY W. MILLER:

THE OFFICE OF ADMINISTRATIVE HEARINGS, having read and considered the Petition for Interim Order, supporting memorandum of points and authorities, declarations, and exhibits, and the exhibits filed in opposition to the petition for interim order;

IT IS HEREBY ORDERED THAT:

1. This is a proper case for the issuance of an interim order of suspension in that respondent has committed acts which constitute a violation of the Veterinary Medicine Practice Act and permitting respondent to continue to engage in the practice of veterinary medicine will endanger the public health, safety, and welfare; and

2. Therefore, veterinary license number 5490 issued to respondent Daniel Koller, D.V.M. is suspended pending hearing and decision pursuant to Business and Professions Code section 494.

DATED: 1/31/03


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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DECISION

On January 28, 2003, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Linda K. Schneider, Deputy Attorney General, represented petitioner.

Cary W. Miller, Attorney at Law, represented respondent.

The matter was submitted on January 28, 2003.

FACTUAL FINDINGS

1. On December 20, 2001, Susan M. Geranen, Executive Officer of the Veterinary Medical Board of California (hereafter, "the Board"), filed a Petition for Interim Order of Suspension Pursuant to Government Code section 494, with accompanying Points and Authorities, Exhibits, and Supporting Declarations. The Petition charged respondent Daniel Koller with unprofessional conduct by using and administering controlled substances to himself and others, using dangerous drugs to the extent it was dangerous or injurious to himself, his wife, and to his daughter, and violating federal and state statutes and regulations relating to dangerous drugs or controlled substances.

A hearing without notice was held on December 20, 2001, at which time the petition for interim suspension order was granted, respondent's license was suspended, and a hearing

on notice was scheduled for January 9, 2002. Thereafter, the parties entered into stipulations to continue the noticed hearing and the interim suspension remained in effect.

2. On June 24, 1974, the Board issued veterinary license number 5490 to respondent. The license was revoked effective April 11, 1979 and reinstated on May 27, 1984 with five years probation.

3. On August 29, 2002, Accusation No. AV 2002-8 was filed against respondent by petitioner on behalf of the Board. Respondent filed a Notice of Defense, and the matter is scheduled to be heard beginning on June 2, 2003.

4. The declarations, attachments, and exhibits attached to the original petition filed on December 20, 2001, the declarations attached to the supplement to the petition filed on January 14, 2003, and the declarations attached to the response to the petition establish that on October 27, 2001, respondent injected himself with a veterinary drug called Telazol and furnished the drug to his wife who injected herself with it. Respondent's wife also consumed alcohol and Vicodan. Respondent's 16-year-old daughter discovered her mother lying on the floor of their bedroom and her father in the bed. She called paramedics who discovered both were unconscious. The paramedic had difficulty awaking respondent.

Telazol is the brand name for the drug containing Tiletamine and Zolazepam. Telazol is a veterinary anesthetic used to sedate and anesthetize cats and dogs for short periods of time, usually in connection with surgery. The Federal Drug Administration has approved Telazol only for use in animals, not for use in humans. It is a Schedule III controlled substance because it has a moderate ability to produce physical or psychological dependence if abused. Respondent did not have a prescription for it. The side effects of Tiletamine include clumsiness, and unsteadiness, lethargy, dry mouth, nausea and temporary amnesia, drowsiness, changes in behavior, hallucinations, dizziness and blurred vision, severe headache, confusion, depression, uncontrolled movements, muscle weakness, chills or fever and sore throat, and a number of allergic reactions.

Respondent's conduct constituted a violation of Business and Professions Code section 4883(g)(2)(B) and Health and Safety Code section 11170.

5. Respondent's daughter knew respondent used drugs and left drugs lying around the house. Respondent's wife knew respondent used Telazol. Respondent's handling of drugs in his home endangered the health, safety and welfare of his wife and daughter. On October 27, when respondent's wife injected Telazol after consuming alcohol and Vicodan, paramedics found her unconscious and not breathing. Her daughter found her in that condition and called paramedics because she was turning blue.

Respondent's conduct constituted a violation of Business and Professions Code section 4883(g)(2)(B) because he endangered the lives of himself, his wife and his daughter. He also violated Health and Safety Code section 11171 by furnishing Telazol to his wife.

6. On October 27, 2001, police officers from the San Diego Police Department executed a search warrant of respondent's residence and found prescription drugs and controlled substances. The specific drugs and controlled substance are listed in the attachments to the Declaration of Detective Randy Alldredge. In addition, the officers found five needles and syringes in the master bedroom which appeared to have been used. The Declaration of Dr. Kay Hossner, a veterinarian and board consultant, indicates there were numerous drugs and controlled substances recovered in the home which required prescriptions.

Respondent does not have a premise permit for his home address. He did not have any animal patient charts, animal records, or medical charts in his home. He did not have any controlling logs indicating the purchase of, use of, or storage of the controlled substances that were recovered in his home. None of the controlled substances were locked in a secure cabinet in violation of 21 Code of Federal Regulations section 1301.75(b). He is not authorized to have controlled substances or prescription drugs at his home without a permit and without meeting federal regulations. Respondent, therefore, did not lawfully possess the controlled substances and prescription drugs listed in the declarations.

7. Respondent at the noticed hearing did not contest that he had engaged in acts or omissions constituting a violation of the Business and Professions Code. His position was that currently he does not represent a threat to the public health, safety, and welfare.

8. To establish his defense, respondent submitted his declaration, the declaration of his wife, three reports from two physicians, and one report from a psychologist.

9. In the part of his declaration relevant to the issues in this proceeding, respondent wrote: He attributed his use of Telazol to a knee operation. It is not clear when that occurred or when he began using Telazol. He took Telazol to sleep on a few occasions. On October 27, 2001, he and his wife took Telazol but he did not inject her. He injected himself. He did not know his wife had consumed alcohol and Vicodan. He admitted endangering his wife and daughter by exposing them to dangerous drugs. Since the incident, there have been no drugs in his home and never will be unless prescribed.

Regarding rehabilitation, respondent wrote: After the incident, he realized he needed help and has received it for the past year, as has his wife. Respondent has been practicing veterinary medicine in a clinic near Portland, Oregon since shortly after the incident. He has not used Telazol. He has been attending NA and/or AA meetings, at first three times weekly and later on a weekly basis. He has seen Dr. McCleary for therapy relating to his use of Telazol and the problems it created in his life and the problems that led to its use. He was tested and seen by Dr. Byrd, and tested and examined by Dr. Mark Kalish. He believes he has demonstrated his willingness to accept responsibility for his conduct. He refrained from practicing in California for more than a year and he has practiced in Oregon without incident.

10. Dr. Mark Kalish, a physician board certified in psychiatry and neurology, conducted a psychiatric examination of respondent on January 9, 2002 and reviewed documents. His diagnostic impression on Axis I was sedative/hypnotic abuse, in remission.

He concluded respondent "... exercised extremely poor judgment in self medicating what was an essentially transitory condition following orthopedic surgery. As is commonly seen in patients who are self medicating, the patient's use of these drugs continued far longer than would have otherwise been necessary." He believed that while respondent did not have a drug abuse problem before the year 2000, "... it is abundantly clear that such a condition has now taken root and requires treatment." He felt respondent was a suitable candidate for diversion and recommended to respondent he enroll in a narcotic anonymous program and participate in the Board's diversion program.

11. The Oregon Board of Veterinary Medicine asked Dr. Walton Byrd to assess respondent's current status following the incident on October 27, 2001. His report is dated May 7, 2002. Respondent told Dr. Byrd his difficulties started in December 2000 when he underwent knee replacement surgery and he had difficulty sleeping. He began to self-medicate himself for sleep with intravenous Telazol. Respondent told the doctor on October 27, he felt the need for a nap and self-administered Telazol. Since then, respondent said he had entered therapy with Standish McCleary, Ph.D. and regularly attended Narcotics Anonymous meeting each week. He indicated he attempted to enter the California diversion program but was not accepted because of the time he needed to be out of the state due to his business, and he was seeking to establish an on-going monitored recovery program in Oregon that would be acceptable to California. Dr. Byrd obtained a random urine test and it was free of illicit substances.

Dr. Byrd's diagnosis on Axis I was dissociative anesthetic abuse — Telazol, in remission. He wrote he would support his continued licensure to practice veterinary medicine provided he agreed to continue his individual therapy with Dr. McCleary, participate in continued 12-step meetings, and meet with a monitoring professional designated by the Board. He also felt respondent needed to participate in regular random urine monitoring over a two to five year period depending on his progress with an annual review each year.

12. Dr. McCleary wrote a letter to the Board dated December 11, 2002. He indicated respondent had been coming to therapy with him since February 7, 2002 and has been conscientious and serious about resolving the personal concerns that brought him to counseling. He reported that respondent understood fully that misusing drugs was never an advisable way to cope and has not repeated any abuse of drugs over the preceding 13 months. He noted respondent was never a recreational drug user and did not drink alcohol and it was unlikely that drug abuse would recur. He felt respondent had benefited from counseling and intended to continue to address and resolve the problems that led to his lapse of judgment. He saw no danger in respondent's reinstatement to veterinary practice.

13. Dr. Kalish examined respondent again on January 27, 2003 and reviewed the above reports and the declarations of respondent and his wife. He indicated respondent told him he had been attending narcotics or alcoholics anonymous meetings on a weekly basis and was receiving therapy from Dr. McCleary. He indicated respondent said he had been tested on six or seven unannounced occasions and all the tests were negative for drugs of abuse. His diagnosis on Axis I was substance abuse disorder, in remission, and marital conflict,

resolving. Dr. Kalish found respondent significantly improved from when he last saw him — he was far less anxious and defensive, and he seemed to have gained significant insight into the psychological issues which gave rise to his difficulties. He felt respondent appeared less depressed and more optimistic regarding his marital relationship. He noted respondent reported he had followed all of the recommendations Dr. Kalish had made the previous year and he had not used any controlled substances in the last year. He concluded respondent did not represent a danger to the public and should he be allowed to practice veterinary medicine.

LEGAL CONCLUSIONS

1. By reason of Findings 4, 5, 6, and 7, it was established respondent engaged in acts constituting violations of the Veterinary Medicine Practice Act.

2. By reason of Findings 4, 5, 6, and 7 and the declarations filed in support of the petition, permitting respondent to continue to engage in the practice of veterinary medicine would endanger the public health, safety, or welfare.

It is clear that at the time the interim order of suspension was issued in December 2001, respondent represented a danger to the public health, safety, or welfare. The question presented in this proceeding is whether the actions respondent has undertaken in the last year can assure the Board and the public that respondent no longer presents that danger.

The evidence respondent presented in support of that conclusion is summarized in Findings 9 through 13. While the opinions of the three professionals suggest respondent no longer represents a danger to the public, their opinions are only reliable if the underlying information they used to reach those opinions is also reliable. It is on that basis that respondent has failed to establish that he no longer represents a threat to the public.

A close reading of the reports reveals the therapists relied almost entirely on what respondent reported to them. One exception is Dr. Byrd. He indicated he conducted a urine test for drugs, and called it random, but it could hardly be considered a random test when respondent knew in advance he would be evaluated by Dr. Byrd and should have suspected he would be tested. Other than that test, and the general comments made by Dr. McCleary, there is nothing in the reports that corroborates anything respondent wrote in his declaration.

His declaration is more noteworthy for what it does not contain than what it does contain. Respondent indicated he attended NA and/or AA meetings. He offered no specific information about those meetings. He did not describe where he went, what occurred at the meetings, who his sponsor might be, what his sobriety date was, what he learned from those meetings, which of the 12 steps he had worked on, and so forth. He gave conflicting accounts of how often he went, indicating in his declaration he went three times a week at first and then once a week but he told Dr. Kalish and Dr. Byrd he went on a weekly basis. He did not tell Dr. Byrd about attending AA meetings.

A person participating in 12-step program generally signs in at meetings. Respondent could have, but did not, present any documentary evidence showing his attendance. He could have had a sponsor or other person who saw him at meetings submit a declaration. Without some corroboration, respondent's claim he attended 12-step meetings is insufficient.

The matter of urine testing is troubling. Respondent told Dr. Kalish in January 2003 he had tested on six or seven unannounced occasions and all the tests had been negative. Dr. Kalish did not report he tested respondent either in 2002 or 2003. However, respondent in his declaration wrote he had "... been tested and examined by Dr. Mark Kalish. . ." Respondent executed his declaration on January 13, 2003, two weeks before he saw Dr. Kalish the second time. In addition, respondent did not state in his declaration he had been tested six or seven times; his only comment was he had been tested and seen by Dr. Byrd, and tested and examined by Dr. Kalish. Finally, if respondent had been tested, he could have supplied documentary proof of those tests. He did not. His conflicting statements and the absence of corroboration raise serious questions about his veracity.

Respondent presented no evidence of any sort of monitoring, and certainly no evidence of the type of monitoring provided in a diversion program. He saw Dr. McCleary, but there is no indication in Dr. McCleary's letter what his qualifications and experience in the field of addiction are, how often he saw respondent, what if anything he did to monitor respondent, what if anything he did to assure himself that what respondent was telling him was the truth, and so forth. There is nothing in Dr. McCleary's letter or respondent's declaration that establishes Dr. McCleary's counseling constituted the type of program contemplated by Dr. Kalish in his 2002 report or by Dr. Byrd.

Respondent's attitude toward his rehabilitation is open to question. He told Dr. Byrd he attempted to enter the California diversion program, but was not accepted because he was operating a veterinary practice in Oregon. He also told Dr. Byrd he was seeking to establish an on-going monitored recovery program in Oregon that would be acceptable to California. The implication from those statements is that respondent placed his desire to practice veterinary medicine ahead of his desire to treat his drug addiction, and was more concerned about ensuring that his recovery efforts would satisfy the Board than he was in entering a program for his own benefit.

In summary, respondent produced insufficient evidence to establish rehabilitation. His word alone that he no longer uses controlled substances, that there are no drugs in his home, and that there is no need to continue the interim order of suspension is not enough. For him to be believed, he needed to corroborate his words, and he did not do that. In the absence of convincing evidence that respondent has begun the process of rehabilitation and has achieved some success, it must be concluded he represents the same danger to the public health, safety and welfare today that he did more than a year ago.

ORDER

1. Veterinary license number 5490 issued to respondent Daniel Koller, D.V.M. is suspended pursuant to Business and Professions Code section 494(a).
2. Respondent Daniel Koller, D.V.M. is prohibited from the practice of veterinary medicine in the State of California until such time as the Board renders a decision pursuant to Business and Professions Code section 494(f).

DATED: 1/31/03



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings