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**BEFORE THE
VETERINARY MEDICAL EXAMINING BOARD
STATE OF OREGON**

D GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

**In the Matter of the License to
Practice Veterinary Medicine of**

Daniel G. Koller, DVM

Licensee

**FINAL ORDER
ON RECONSIDERATION
OVMEB Cases 08-0015, 08-0019**

On June 22, 2011, the Court of Appeals (Court) issued an opinion affirming the revocation of Daniel G. Koller, DVM's (Koller) license to practice veterinary medicine, vacating the order awarding costs, and remanding the case to the Veterinary Medical Examining Board (Board) for reconsideration on the issue of costs. *Koller v. Veterinary Medical Examining Board*, 245 Or App 639 (2011). Koller filed a petition for Review in the Oregon Supreme Court, which was denied on November 10, 2011. *Koller v. Veterinary Medical Examining Board*, 351 Or 318 (2011). On January 3, 2012, the Court issued The appellate judgment remanding the case to the Board.

Subsequently, on February 2, 2012, the Board issued the attached Bill of Costs, which is hereby incorporated in this Final Order on Reconsideration. The Bill of Costs shows that the actual costs of the contested case proceeding totaled \$41,033.42. The Bill of Costs notified Koller that he had 10 days to file exceptions to those costs. Koller filed exceptions on February 6, 2012, as follows: 1) the costs contained in the Bill of Costs exceed those contained in the Final Order ; 2) the Bill of Costs is not sufficiently specific and the costs are exorbitant; and 3) the Bill of Costs reflects changes in the hourly rate. Having reconsidered the issue of costs, the Board issues this Final Order on Reconsideration.

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1 The Court of Appeals concluded that the record was insufficient for the
2 Court to meaningfully review the issue of costs. The Court stated that "[t]here
3 Is no explanation regarding either the time spent by the Office of Administrative
4 Hearings or the Department of Justice." *Koller*, 243 Or App at 641. The Board's
5 Bill of Costs addresses the Court's concerns by providing a detailed assessment
6 of charges from the Office of Administrative Hearings (OAH) and the Department
of Justice (DOJ).

7 The Board concludes that Koller's exceptions to the Bill of Costs are
8 without merit. The Board has the authority to assess against a licensee the
9 actual costs it incurs in a contested case proceeding, which include the fees
charged by OAH and the fees for the legal services of the Board's counsel at DOJ.
10 See ORS 183.634 (requiring most agencies to use OAH services) ORS 183.655
11 (requiring representation by Attorney General in most contested case hearings)
and OAR 137-003-0545 (same). The total amount of actual costs of \$41,033.42 in
12 the Bill of Costs exceeds the amount of costs assessed in the Final Order because
13 there were additional costs that were not reported prior to the issuance of the
14 Final Order. Here, the Board is assessing less than the actual costs of the
15 contested case proceeding because the Board is only assessing the costs that were
16 included in the Final Order and not pursuing its right to pursue all of the costs
incurred relating to the contested case proceeding. Therefore, the Board assesses
17 Koller costs totaling \$37,478.57, which is less than the actual costs incurred
by the Board.

18 The Board finds that Keller's remaining exceptions are without merit. The
19 Bill of Costs sufficiently specifies how the costs were incurred, and the costs
20 assessed in this order on reconsideration are not exorbitant. Keller's
21 characterization of the underlying case as a two-day hearing fails to take into
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1 consideration the complexity of the case or the extensive proceedings, which are
2 outlined in the Final Order, that were required prior to the two-day hearing. Therefore,
3 we reject those exceptions to the Bill of Costs.

4 **ORDER**

5 The Veterinary Medical Examining Board hereby assesses against Koller \$37,478, 57,
6 the portion of the actual costs of the proceeding assessed in the Final Order.

7 Dated this 29th day of March, 2012

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9 Veterinary Medical Examining Board
State of Oregon

10
11 Lori Makinen, Executive Director

12 **APPEAL**

13 If you wish to appeal this Final Order on Reconsideration, you must file a
14 petition for review with the court of Appeals within 60 days after this final order is
15 served upon you. See ORS 183.480 et seq.