

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

In the Matter of the Accusation Against:

GLEN WEBER,

Veterinarian License No. VET 4872,

Respondent.

Case No. 4602016000354

OAH No. 2018030477

DECISION AFTER REJECTION

Administrative Law Judge Regina Brown, Office of Administrative Hearings, State of California, heard this matter on October 1-3 and 5, 2018, in Oakland, California.

Sheila J. Vasantharam, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of California, represented complainant Jessica Sieferman, in her official capacity as Executive Officer,¹ Veterinary Medical Board (Board), Department of Consumer Affairs, State of California.

Bonnie Lutz, Esq., KLINEDINST PC, represented respondent Glen Weber, DVM, who was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 5, 2018.

On January 4, 2019, the Board issued an Order of Non-Adoption to decide the case upon the record, including the transcript of the hearing, and upon such written argument as the parties wished to submit. The Order Fixing Date for Submission of Argument was issued on January 28, 2019, setting the date for submission of written arguments by February 11, 2019. On February 4, 2019, the Board issued an Order Extending Deadline for Submission of Written Argument, extending the date for submission of written arguments from February 11, 2019, to February 25, 2019.

¹ On March 12, 2018, Ethan Mathes became the Board's Interim Executive Officer in place of the prior Executive Officer, Annemarie Del Mugnaio. On July 2, 2018, Jessica Sieferman began her appointment as the Board's Executive Officer.

On February 22, 2019, the Board received Complainant's Argument After Order of Rejection of Proposed Decision. On February 25, 2019, the Board received Respondent Glen Weber, DVM's Written Argument Following Order of Nonadoption of Proposed Decision.

FACTUAL FINDINGS

Background

1. On January 4, 1971, the Board issued Veterinarian License No. VET 4872 to respondent Glen Weber, DVM. The license will expire on April 30, 2020, unless renewed.

2. Respondent received his doctorate in veterinary medicine in 1968, from Purdue University School of Veterinary Science and Medicine. In 1971, he moved to California and worked at a small animal practice. From 1974 to 1980, he worked in a small animal emergency hospital clinic and as a relief veterinarian for many practices in Alameda and Contra Costa counties. In 1980, respondent purchased San Ramon Veterinary Hospital (SRVH) and maintained a solo practice until 2012, when he sold the hospital to Jaswinder Goraya, DVM. Respondent continued to work one day a week, primarily on Tuesdays, as a relief veterinarian at SRVH. His general duties as a relief veterinarian included meeting with clients, performing physical examinations, ordering medications and tests, performing veterinarian treatments, performing routine surgical procedures such as spay and neuter, reviewing laboratory tests, and coordinating with staff regarding hospitalized patients.

3. On September 11, 2017, complainant filed the Accusation, which alleged five causes for discipline, against respondent. At hearing, complainant amended the Accusation as follows:

a. First Cause of Discipline was amended, and the second sentence now reads: "Respondent failed to record which surgical method he used to perform onychectomies [declawing procedures] on Abby and Teeger."

b. Second Cause for Discipline was amended, and the first sentence now reads: "Respondent has subjected his Veterinarian License to discipline because he acted with incompetence when he left the post-operative bandages on Ryder, Abby, and Teeger too long. (Bus. & Prof. Code, § 4883, subd.(i).)"

c. Third Cause for Discipline was stricken in its entirety.

d. Fourth Cause for Discipline was amended, and the first sentence now reads: "Respondent has subjected his Veterinarian License to discipline because he failed to provide humane treatment to Ryder, Abby, and Teeger when he provided them with an insufficient amount of painkillers after the onychectomies."

4. In May 2015, consumer complainant P.Y. inquired about his three cats, Abby, Teeger, and Ryder, undergoing bilateral front paw declawing procedures at SRVH because they were destroying his furniture. Dr. Goraya did not perform this type of procedure. Dr. Goraya asked respondent to perform the declawing procedures as the relief veterinarian. Respondent has performed over 180 declawing procedures in his 30 years of practice.

5. Declawing, which involves the disarticulation of bone, is a painful procedure requiring pain control, anesthetic induction, and hospitalization. There are three different surgical methods for performing a declawing procedure, by using a scalpel blade, guillotine style nail trimmer, or a laser. The standard of care requires sufficient recordkeeping of any procedure including the type of surgical procedure, type of surgical closure, type of anesthetic, and any complications. The standard of care requires that a veterinarian address pain management before and after a declawing procedure. After a declawing procedure, the incision is usually sutured or closed using surgical adhesive, and the area is bandaged to control the bleeding. The bandages are usually placed securely around the paws, but loose enough to allow for post-surgical swelling. Bandages that are placed too tight or left on too long can compromise the blood circulation to a cat's paws.

6. Respondent performed the declawing procedures on the cats on May 12, 2015, using a nail trimmer. Respondent did not document in Abby's or Teeger's medical records the surgical method that he used during their declawing procedures. Respondent noted in Abby's and Ryder's surgery reports that he administered 2 ml of PropoFlo, through intravenous (IV) administration. Respondent did not document in the surgery report the amount of PropoFlo he administered to Teeger. During the procedures, the three cats were administered injections of butorphanol (opioid analgesic) and Metacam for pain relief. Butorphanol lasts for hours, and Metacam provides pain relief for 24 hours. Respondent did not include a plan in their medical records for post-operative pain control for any of the cats during their recovery period.

7. In Ryder's surgery report, respondent noted that he performed disarticulation at the distal nail bed from P3 and suture closed with pad retention that was located properly with 3-0 propylglo cruciate. There were sutures on each toe, and a Telfa pressure bandage was applied to each front foot. In both Abby's and Teeger's surgery reports, respondent wrote that he performed declaw front feet only with disarticulate suture 3-0 propylglo and pressure bandage, and "[s]ee Ryder's surgery write up." Respondent did not make a notation in any of the medical records of when to remove the cats' bandages.

8. Respondent, as the relief veterinarian, was not scheduled to return to SRVH until the following Tuesday, May 19, 2015. The veterinarian on duty, Dr. Goraya, was responsible for the post-surgery care of the cats until respondent returned.

9. The medical records had no entries regarding any care provided to the cats on May 13, 2015. The medical records indicated that the cats' vital signs (temperature, attitude,

appetite, and urination) were taken by staff on May 14, 2015. However, the evidence at hearing established that on May 14, 2015, Dr. Goraya, with the help of a veterinary assistant (VA), removed the bandages from their paws. The paws on all three cats were swollen and bleeding. According to VA, she had “never seen paws like this” after a declawing procedure. At Dr. Goraya’s request, VA called respondent. Respondent disputes that he returned to SRVH on the evening of May 14, and there was no notation in the medical records. However, the evidence established that respondent returned to SRVH that evening and looked at the cats’ paws.

10. On May 15, 2015, respondent returned to SRVH to evaluate the cats. The pain medication, buprenorphine, and Convenia (antibiotic) were administered to Ryder and Teeger. Ryder also received an injection of the corticosteroid Dexamethasone. Abby was only given Convenia. On May 16, the medical records only noted that all of the cats’ vital signs were taken. On May 17, Ryder’s vital signs were taken, but there were no notations of any observations in either Abby’s or Teeger’s records.

11. On May 18, 2015, respondent returned to SRVH. Respondent noted in Ryder’s medical record that both of Ryder’s front feet were still swollen and exuding serum mixed with blood. Respondent noted in Teeger’s medical record that Teeger’s feet were very mildly swollen with very little serosanguinous drainage. Respondent noted in Abby’s medical record that Abby’s feet were only a little swollen with very little serosanguinous drainage. Respondent administered injections of Metacam to all three cats. This was the first documented pain medication administered to Abby since the surgery on May 12. On May 19, 2015, the medical records noted that all three cats’ vital signs were taken by staff.

12. On May 20, 2015, respondent returned to SVRH and examined the cats. Respondent found that Ryder’s paws were much better, and he could be released and return for suture removal in two weeks. Respondent found that the swelling in Teeger’s paws was nearly gone, but the caudal aspect of skin was inflamed, and his feet were warm. Respondent found that Abby’s paws were still swollen with limited use, and she had blood in her urine. Respondent suggested that the cats might heal faster in a confined space in their normal environment. The three cats were prescribed Baytril (antibiotic) and released to P.Y., who took them home.

13. That night, P.Y. kept the cats in an enclosed bathroom. The cats were bleeding profusely from their paws, and their behavior was abnormal. P.Y. sent an electronic message to respondent with photographs of the cats’ paws. Respondent told P.Y. to return the cats to SRVH the next day.

14. On May 21, 2015, respondent and Dr. Goraya met with P.Y. Respondent was concerned about the cats’ paws. Respondent told P.Y. that there was nothing else that he could do for the cats. He referred them to Timothy Sellmeyer, DVM, with SAGE Center for Veterinary Specialty and Emergency Care (SAGE), for further evaluation.

15. On May 21, 2015, at SAGE, Dr. Sellmeyer examined the cats, made diagnoses, and provided treatment including pain management, bandage changes, and hydrotherapy.

16. In particular, Dr. Sellmeyer found that Ryder was fully ambulatory with a mild to moderate bilateral weight bearing forelimb lameness and both forepaws moderately swollen, cool and painful on palpitation, digital pads on both forelimbs were dark purple to black in color. Dr. Sellmeyer diagnosed Ryder with partial incisional dehiscence and necrosis following forelimb declaw. Dr. Sellmeyer amputated parts of Ryder's toes on both front paws and performed reconstructive surgery of the paw pads. Currently, Ryder limps and primarily uses three legs to ambulate and has occasional intermittent skin redness and bleeding. According to P.Y., Ryder is distant and not as loving as he used to be.

17. Dr. Sellmeyer found that Teeger was fully ambulatory with a moderate bilateral weight bearing forelimb lameness and knuckling on both forelimbs when ambulating. Both forepaws were moderately swollen, cool, and painful on palpitation, and digital pads 3 - 5 on both forelimbs were dark purple to black in color. Dr. Sellmeyer diagnosed Teeger with partial incisional dehiscence and necrosis² following forelimb declaw. Parts of Teeger's toes on both front paws were amputated. According to P.Y., currently Teeger is doing well with occasional callouses and scabbing at the front paws.

18. Dr. Sellmeyer found that Abby was fully ambulatory with a moderate bilateral weight bearing forelimb lameness. Both forepaws were moderately swollen, cool, and painful on palpitation. All digital pads were pigmented, so he was unable to assess Abby for necrosis. Dr. Sellmeyer diagnosed Abby with partial dehiscence and possible necrosis following forelimb declaw likely secondary to bandage morbidity, viability of the paw and pads remained questionable. Abby's front paws were amputated at the level of the mid-metacarpal bones. Abby had reconstructive surgery of the front paw pads of both front limbs; however, the skin grafts failed to produce the desired effect. According to P.Y., Abby now limps, and he has to carry her to the litterbox once or twice a day, although she ambulates well around the house.

19. The cats were hospitalized at SAGE for post-declawing complications for approximately 21 weeks. The hospitalization costs were covered by respondent's malpractice insurance. Dr. Goraya refunded P.Y. the cost of the declawing procedures and care at SRVH in the amount of \$1,312.

Board Investigation

20. Approximately one year later, on May 29, 2016, P.Y. filed a complaint with the Board regarding the "butchered" declawing procedures and care of the cats provided by respondent and Dr. Goraya. P.Y. complained that the cats' quality of life was negatively affected, and they were no longer using their litter box at home. Respondent was given an opportunity to provide a written response to the complaint.

² Dehiscence is the rupture or splitting open of a surgical wound to discharge its contents. Necrosis means that the tissue is dying and must be removed or it will fall off (slough).

21. In his written response to the Board, through his attorney, dated July 28, 2016, respondent confirmed that he performed the declaw surgeries at SRVH as a relief veterinarian on May 12, 2015. However, respondent stated that he examined the cats only on May 18 and May 20, 2015, and provided details of his observations and the actions that he took on those dates. The Board had additional questions for respondent.

22. In his written response to the Board, through his attorney, dated October 26, 2016, respondent described his general duties as a relief veterinarian at SRVH. Respondent stated that he did not work at SRVH on May 13 or 14, 2015. Respondent wrote the following: “No formal protocol for transferring post-operative cases or care. It was [respondent’s] custom and practice to provide verbal instructions to the staff present on the day he worked regarding follow-up care. He believes that he instructed the staff on May 12, 2015, regarding the need to check the P.Y.’s cats’ paws daily. Many members of the staff at [SRVH] had been involved with post-operative care of declaws in the past.”

23. In response to an inquiry from the Board regarding when the bandages were removed, respondent provided a written response, through his attorney, dated November 2, 2016. Respondent indicated that he did not know when the pressure bandages were removed, and he did not know who removed the bandages. According to respondent, he was not working on the days following the surgeries, and the medical records did not indicate when the bandages were removed. Furthermore, respondent did not know which doctor assessed their paws post-surgical and post-bandage removal.

Complainant’s Witness Testimony

24. Jeni Goedken, DVM, is licensed in California and contracted with the Board to conduct hospital premises inspections in Santa Clara County, to serve as an expert witness, and to review complaints. Dr. Goedken obtained her degree in 2005, from the University of Illinois. Currently, she is also contracted with Vetted Petcare (dba Vet Pronto) to conduct house calls where she administers vaccines and performs examinations.

25. On February 22, 2017, Dr. Goedken was selected by the Board to evaluate P.Y.’s complaint. Dr. Goedken reviewed the medical records from SRVH and SAGE, and the statements from respondent and Dr. Goraya. Dr. Goedken issued a report.

26. In her report, Dr. Goedken found that respondent failed to provide appropriate pain control and humane care in the days after the cats’ surgical declawing procedures. According to Dr. Goedken, when respondent did not plan for adequate post-operative pain control for the cats during their recovery period, he departed from the standard of care in the veterinary community. Medical records are required to document pain control as a veterinarian cannot presume or assume that verbal instructions are being followed.

27. In her report, Dr. Goedken found that respondent failed to properly record the surgical procedures when he wrote, “see Ryder’s surgical write up,” referring the reader to Ryder’s medical record to obtain a full description of Abby’s and Teeger’s surgeries. The

information missing in Abby's and Teeger's surgical reports was the location on their paws where respondent performed the surgical disarticulation. This should have been included in Abby's and Teeger's charts because a medical record is to stand alone so that another veterinarian, without the other patient's medical record, would have all pertinent information. Also, Dr. Goedken found that respondent failed to record the surgical method used to perform the declawing procedures for all three cats.

28. Dr. Goedken also concluded in her report that respondent placed excessively tight bandages on the three cats' paws causing circulatory compromise and subsequent tissue damage to the cats' paws which departed from the standard of care in the veterinarian community.

29. Dr. Goedken testified at hearing and reiterated the opinions and conclusions in her report. However, at hearing, the Accusation was amended, alleging that respondent left the post-operative bandages on the cats too long, not that he placed them on too tight, which is what Dr. Goedken concluded in her report. Dr. Goedken admitted that there was no evidence that respondent had placed the bandages on too tight. She agreed with Dr. Sellmeyer that it was likely that necrosis of the paws was caused by the failure to remove the bandages in a timely manner. Dr. Goedken also agreed that the doctor on duty is responsible to administer pain medications daily that are tailored by observations of the cats. However, Dr. Goedken reiterated that respondent did not provide a pain management plan, and the medical records contained no documentation of assessment of the cats' pain until May 18, 2015. Furthermore, the medical records had no indication of an assessment of the paws on the day after the surgery.

30. Dr. Sellmeyer has been licensed since 2002, and has performed approximately 20 declaw surgeries with no negative outcomes. According to Dr. Sellmeyer, normally, bandages remain on the paws between 12 to 24 hours after surgery. When bandages are timely removed, there are usually normal post-operative outcomes. Dr. Sellmeyer opined that a veterinarian in charge is responsible to administer pain medications whether there is a written pain management plan or not. Dr. Sellmeyer's practice is to include a pain management plan in the medical record after a declawing procedure and a note of when the bandages are to be removed.

31. Dr. Sellmeyer confirmed that the loss of tissue on the three cats' paws was secondary to the tourniquet effect of the bandages placed after the surgery and left on too long, which is rare. Dr. Sellmeyer could not conclusively determine whether the bandages were placed too tight after surgery or if they were left on too long because both can result in bandage morbidity. In any event, according to Dr. Sellmeyer, the bandages should have been looked at the day following surgery.

Respondent's Evidence

32. During his direct examination, respondent testified that this was his first declawing procedure since he sold the practice to Dr. Goraya in 2012. Respondent

contradicted Dr. Goraya's assertion that respondent had a "standing order" or custom and practice for after care following a declawing procedure. However, in a typical case, the bandages are removed within 48 hours and the patient is discharged on day three. However, if required, respondent will remove the bandage the day after the surgery if there is an indication of tourniquet effect. Respondent also acknowledged that VA, a trained veterinary assistant, was familiar with his aftercare procedures.

33. Respondent stated that he did not see the cats until May 18, 2015, when VA called him, and he was not aware that Dr. Goraya was not providing adequate aftercare. Respondent testified that his first contact with the owner after the surgery was on May 21, 2015, and that he never exchanged messages about the cats' conditions with the owner.

34. Respondent stated that he contacted his malpractice insurance company because he did not believe that Dr. Goraya was responsive, and the patients needed extensive care that SRVH was not trained to provide. Respondent stated that he never had an agreement with Dr. Goraya after May 18, 2015, that he would provide aftercare, and as the veterinarian on duty, Dr. Goraya was responsible for the cats' post-surgical aftercare. Furthermore, respondent testified that Dr. Goraya called respondent in for a consultation on May 21, 2015, and did not reveal that the cats had returned to the hospital. That was the last day that respondent worked at SRVH.

35. Respondent also stated that the cats were not examined from May 12 to 18, 2015, according to their medical records, and they should have been examined daily. Respondent stated that he believed that the bandages were left on too long. Respondent acknowledged that it was improper to refer to Ryder's medical record in the other cats' surgical reports. However, respondent explained that he did so because they all had similar procedures, and he believed that he provided a sufficient description of their surgical procedures. Respondent acknowledged that he made an error in failing to document how much PropoFlo was administered to Teeger, but the name, strength, and route of administration of the drug was documented on Teeger's surgery report.

36. Contrary to his earlier testimony at hearing, after VA and Dr. Goraya testified, respondent, who had not completed his testimony, recalled that he had performed other declaw surgeries at SRVH before May 12, 2015, all with positive outcomes. Respondent stated that he failed to document a pain management plan because he had three patients and it had been a long day. He acknowledged that he did not document when the bandages should be removed as he had done in the prior surgeries. Respondent believed that Dr. Goraya should have known to remove the bandages within 48 hours based on the prior declaw surgeries performed at SRVH. Contrary to his earlier testimony, respondent used the term "prior custom and practice."

37. Contrary to his written explanations to the Board and his earlier testimony at hearing adamantly stating that he had no indication of the cats' condition and that he was not at SRVH on May 13 through May 17, respondent changed his testimony and recalled speaking to VA on May 14, 2015. However, he stated that he "did not get a sense of urgency or that there

was a huge problem,” inferring that he did not return to SRVH on May 14, 2015. Respondent admitted that it was possible that he came in to SRVH on May 15, 2015, and assessed the cats and their bandages had been removed. Respondent unconvincingly attempted to explain that he was “mixed up” about when he returned to SRVH after the surgeries. Furthermore, although he adamantly denied having any contact with the owner until May 21, 2015, respondent finally acknowledged that he responded to an email from the owner with photographs attached on May 20, 2015. Respondent’s testimony at hearing was not credible. His versions of events changed and his written explanation to the Board differed from his testimony at hearing. In assessing VA’s and Dr. Goraya’s credibility against respondent’s credibility, the evidence is more convincing and persuasive regarding the sequence of events as detailed by VA and Dr. Goraya.

38. James Beebee, DVM, has been licensed since 1978, and is the medical director of Pet Vet Care Centers. Dr. Beebee testified that he has known respondent over 32 years. Respondent has worked for Dr. Beebee as an independent contractor relief veterinarian for the past two years. Dr. Beebee has read the Accusation, and the contents did not change his opinion of respondent. Dr. Beebee believes that respondent should be allowed to continue to practice. If respondent is placed on probation, Dr. Beebee would continue to hire him as a relief veterinarian. Dr. Beebee also wrote a letter of support, dated October 4, 2017, emphasizing his wholehearted support of respondent as a “man that embodies excellence of character and professionalism.”

39. Dr. Beebee has performed approximately 70 declaw procedures with no negative outcomes. According to Dr. Beebee, after a declawing procedure, aftercare is very important, and bandages must be removed the day after surgery. The paws must be examined post-surgery on the next day because of potential loss of circulation and compromising soft tissue that is healing. Dr. Beebee also stated that the bandages should not remain on a cat’s paws more than 48 hours. A relief veterinarian should provide instructions in the medical records after surgery on when to remove the bandages. In addition, a patient requires pain medication for five to seven days post-surgery. The veterinarian on duty is responsible to administer additional pain medications. Also, the medical record provides information on what medications have been provided to a patient.

40. Andrew Moffatt, DVM, is a veterinarian with Groveway Veterinary Hospital, and founder of Vetncare Inc., and testified at hearing. Dr. Moffatt does not perform declaw procedures. Respondent has worked for Dr. Moffatt as a relief veterinarian for five years. Dr. Moffatt has worked with over 100 veterinarians in 30 different hospitals in three different countries, and respondent, with his high skill level, is one of the more competent practitioners that he has associated with. Dr. Moffatt also wrote a letter of support dated October 10, 2017. The allegations in the Accusation have not changed Dr. Moffatt’s opinion about respondent’s qualifications.

41. Dr. Moffatt agrees that an on-duty veterinarian assumes responsibility for a patient’s post-surgery care. Industry standard is that on a daily basis, a pet is assessed, bandages are changed, pain is assessed, and medications are administered. A hospitalized

patient should be assessed two times a day, and this should be documented in the medical record. A relief veterinarian is expected to write in the record an outline of the procedure, the type and amount of anesthetic, and an ongoing plan for the next 12 to 24 hours. However, in the absence of a written plan, an on-duty veterinarian is responsible for the care and continuation of pain medication for a post-surgical patient.

42. VA has worked for SRVH for 26 years as the manager and performed veterinarian assistant duties. She has assisted respondent with over 20 declaw surgeries, both before and after he sold the practice to Dr. Goraya, with no negative outcomes until this incident. VA assisted respondent with the declawing procedures on Abby, Teeger, and Ryder. VA confirmed that she assisted Dr. Goraya with removing the bandages from the three cats two days after the declawing procedures, and she observed the condition of their paws. She confirmed that she notified respondent on May 14, 2015, of their condition.

43. Dr. Goraya has been licensed since 2005, and he purchased SRVH from respondent in January 2012. He has never performed declawing procedures because he is not comfortable with the potential complications. He testified that respondent performed between six and 10 declaw surgeries at SRVH under Dr. Goraya's ownership. Dr. Goraya knew, based on the prior declawing procedures, that aftercare required him to remove the bandages within 48 hours and to follow respondent's written instructions in the medical records regarding the administration of pain medication and removal of sutures in two weeks. Also, Dr. Goraya knew that VA had assisted respondent with declawing procedures and knew to remove the bandages within 48 hours. Dr. Goraya's practice was if there was no obvious swelling or discharge on the bandages on the day after the surgery, then Dr. Goraya would wait to remove the bandages within 48 hours, as he had done with the prior surgeries.

44. Dr. Goraya testified that he examined the cats daily following surgery. They were eating and drinking with no evidence of sickness. He checked the bandages for bleeding, and they were clean and dry with no swelling above the bandages, so he waited to remove the bandages within 48 hours. There was no evidence to deviate from prior post-surgical instructions. Dr. Goraya acknowledged that he did not document his observations. He stated that he administered pain medications daily as the responsible doctor on duty. When he removed the bandages on May 14, 2015, the cats' paws were swollen, bleeding, and discolored. According to Dr. Goraya, respondent came in to SRVH that evening and inspected their paws. Respondent returned on May 15, 2015, and helped clean the paws and had VA administer injections. Respondent told Dr. Goraya that he would take full responsibility, so Dr. Goraya did not make any notations in the medical records because he believed that respondent would do so. Dr. Goraya does not believe that the bandages were left on too long; he believes that they were on too tight.

45. The Board issued a First Amended Accusation against Dr. Goraya and SRVH on September 11, 2018, alleging that Dr. Goraya did not provide the cats with pain control medications on the days following the surgery and he failed to document in the medical records who removed the bandages and when the bandages were removed.

Respondent's Expert Witness

46. George B. Cuellar, DVM, obtained his degree from the University of Georgia in 1984. Dr. Cuellar served as president of the California Veterinary Medical Association in 2002. He has been the owner of Southern California Veterinary Hospital since June 2005, and has served as an expert witness since 2010, in over 100 cases. Dr. Cuellar does not perform declaw surgeries now because it is prohibited in Los Angeles County. Prior to that, he performed over 1,000 declaw surgeries with no negative outcomes.

47. Dr. Cuellar defined negligence as conduct that is below the standard of care of a reasonable veterinarian with the same level of skill in similar circumstances. Dr. Cuellar testified that the standard procedure for a veterinarian post-declaw surgery is to address pain, conduct examinations, and perform bandage removal. On the day after a declawing procedure, Dr. Cuellar usually removes the bandage to make sure that there is no swelling and to address adequate pain control. A veterinarian should be looking for pain on palpitation, discharge on the bandages, redness above the bandages, and whether the cat is using his paws. The veterinarian on duty is responsible for care on the days after surgery. Dr. Cuellar opined that it is important to note in the medical record when a bandage is removed because bandages are usually responsible for morbidity, and they must be changed or removed as needed. The veterinarian on duty provides pain medication on the days after surgery. Pain control is individualized to the patient and tailored each day even if there is a written pain management plan.

48. Dr. Cuellar testified that the surgical reports for Abby and Teeger complied with the requirements of Business and Professions Code section 4855, which requires the veterinarian to keep a written record of all animals receiving veterinary services and provide a summary of that record to the owner of animals receiving veterinary services when requested. Dr. Cuellar opined that the cats' medical records also complied with the requirements to keep records for surgical procedures that include a description of the procedure, the name of the surgeon, the type of sedative, anesthetic agents used, their route of administration, and their strength pursuant to California Code of Regulations, title 16, section 2032.3, subsection (a)(9). According to Dr. Cuellar, merely using the term "disarticulate" adequately described the surgical procedure in the surgical report, and there was no need for respondent to specifically note the method that he used, unless he had used a laser.

49. Furthermore, Dr. Cuellar opined that it was not below the standard of care to refer to Ryder's medical records in the other cats' surgical reports. According to Dr. Cuellar, a veterinarian is allowed to reference other items in a patient's medical record or to instruct one to view another patient's medical record. Dr. Goedken's testimony is more persuasive that this was not an acceptable practice to do so in Abby's and Teeger's medical records. Dr. Sellmeyer agreed that this is not an acceptable practice.

50. Dr. Cuellar opined that a relief veterinarian does not need to include when bandages are to be removed post-surgery in the medical record and does not need to

document when pain medications are to be administered. Dr. Cuellar concluded that respondent was not incompetent and was not responsible for removal of the bandages. Dr. Cuellar opined that it was not below the standard of care to remove the bandages at 48 hours if the on-duty veterinarian examined the cats and the bandages at 24 hours. Dr. Cuellar's research has shown that it is not below the standard of care to remove bandages within 48 hours. In a poll of veterinarians, 80 percent remove the bandages within 12 to 24 hours, and 10 percent remove the bandages within 48 hours. Therefore, he believes that respondent was not negligent or incompetent in leaving the bandages on too long.

51. Both Dr. Sellmeyer and Dr. Goedken agreed that leaving the bandages on too long was the likely cause of the injuries to the cats' paws. However, they also both agreed with Dr. Cuellar that it was not below the standard of care to remove the bandages at 48 hours, if a veterinarian observed their paws at 24 hours and saw no adverse symptoms.

52. Dr. Cuellar opined that respondent was not responsible for the cats' post-surgical care after May 12, 2015, if he was not scheduled to work. However, Dr. Goedken was more persuasive that it was outside the standard of care for respondent not to have a plan for pain management. In any event, other experts agreed that whether there was a written pain management plan or not, the veterinarian on duty was responsible for pain management. As respondent was not the veterinarian on duty, he did not fail to provide humane treatment to the cats because he was not responsible for their care after May 12, 2015.

53. Dr. Cuellar opined that, although respondent did not note the amount of Propofol given to Teeger during the surgery, the surgical report identified the type of drug as Propofol, so one can assume that it was used because the strength and route of administration was also documented. Dr. Cuellar concluded that there was no insufficient recording of the anesthetic used during Teeger's surgical procedure.

54. California Code of Regulations, title 16, section 2032.3, subsection (a)(9), does not specifically require documentation of the amount of anesthesia administered to a patient during surgery. However, given that respondent included the amount of Propofol administered in the other cats' medical records, he should have also included the amount in Teeger's surgical report. Furthermore, both Dr. Beebe and Dr. Moffatt, who supported respondent, opined that the amount of anesthesia should be documented in the medical record. Respondent failed to do so.

Respondent's Additional Evidence of Mitigation and Rehabilitation

55. Emily Lin, DVM, is Clinical Director of Pinole Pet Hospital, and writes in a letter of support that respondent has worked as a relief veterinarian for five years. According to Dr. Lin, respondent has provided solid medical and surgical care to patients, has been reliably consistent with his solid medical plans, has provided thorough recommendations and proper treatments, and has performed surgeries with positive outcomes. Respondent connects with clients, works well with the team, and

communicates clearly with clients and staff for proper follow-up. Dr. Lin describes respondent as a valued member of the profession and writes that respondent has a “high level of care in keeping our patients’ best interest at heart, empathy, clear communication, and care for our clients are attributes that I have known Dr. Weber to embody.”

56. Respondent has been involved in local community organizations and events promoting the practice of veterinary medicine and educating the community on animal care and welfare. He is a charter member of the San Ramon Chamber of Commerce, served on the board of directors, and was selected as the Business Person of the Year in 2006. He is a charter member of the Rotary Club of San Ramon and was voted Rotarian of the Year in 1994. He served a two-year term as president of the Contra Costa County Veterinary Association and regularly attends meetings.

57. After retiring, respondent dedicated himself to continuing the practice of veterinary medicine and surgery as a relief doctor with nine different practices. Over the past two years, he has focused primarily on one practice. His primary goal is to enhance the enjoyment of pet ownership and to serve the pet owning public and their pets while protecting the health and wellbeing of those pets.

58. Respondent has taken many continuing education classes over the years, including the SAGE Small Animal Veterinary Symposium on Medical/Surgical/ Professional Development/Private Practice Management in March 2017, and the 2017 Pacific Veterinary Conference in June 2017. He attended the United States Department of Agriculture Animal and Plant Health Inspection Service Veterinary Services, National Veterinary Accreditation Program, in July 2017. Respondent has taken double the required continuing education courses between May 2016 and April 2018.

59. Respondent has no record of prior disciplinary action before the Board. Respondent states that he has changed his practices as a result of this incident. He reviews his reports for accuracy in medical records after surgery. Respondent has taken no continuing education courses on medical recordkeeping in the last five years.

60. Respondent has been married to his wife for 43 years, and he has a son who is a FedEx pilot and a daughter who is a middle school teacher.

Costs

61. The Board certifies that costs in the amount of \$7,862.50 were incurred in connection with the prosecution of the Accusation by the Office of the Attorney General. The Board certifies that costs in the amount of \$1,410 were incurred in connection with the investigation of the Accusation. The total costs of investigation and prosecution sought is \$9,272.50.

62. Respondent did not object to the costs. However, the costs do not appear appropriate to the alleged conduct of respondent.

LEGAL CONCLUSIONS

1. The purpose of licensing statutes and administrative proceedings enforcing licensing requirements is not penal but public protection. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

2. An individual who holds a license to practice a particular profession has a fundamental vested right to continue in that licensed activity. Procedural due process requires a regulatory Board or agency seeking to suspend or revoke a professional license to prove the allegations of an accusation by clear and convincing evidence, rather than proof by a preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 991-992; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

3. Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard that is sufficient for most civil litigation. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

4. A veterinarian, as required by regulation of the Board, must keep a written record of all animals receiving veterinary services and provide a summary of that record to the owner of animals receiving veterinary services when requested. The minimum amount of information that must be included is established by the Board. (Bus. & Prof. Code § 4855.)

5. Business and Professions Code section 4883, subdivision (i), provides that the Board may deny, revoke, or suspend a license or assess a fine as provided in Business and Professions Code section 4875 for fraud, deception, negligence, or incompetence in the practice of veterinary medicine. The Board may revoke or suspend a license or assess a fine for causes under the Veterinary Medicine Practice Act. (Bus. & Prof. Code § 4875.)

6. California Code of Regulations, title 16, section 2032.05 states that: “When treating a patient, a veterinarian shall use appropriate and humane care to minimize pain and distress before, during and after performing any procedure(s).”

7. California Code of Regulations, title 16, section 2032.3, subsection (a), requires a veterinarian to prepare a legible, written or computer generated record for the animal patient, and records for surgical procedures shall include a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agents used, their route

of administration, and their strength if available in more than one strength (Cal. Code Regs., tit. 16, § 2032.3, subs. (a)(9)).

First Cause for Discipline

8. Cause for discipline was not established for a violation of Business and Professions Code section 4855, for failure to create adequate written records and failure to record which surgical method he used to perform onychectomies on Abby and Teeger, by reason of the matters set forth in Findings 4 through 7, 20, 27, 35, 48, and 49, and Legal Conclusion 4. Business and Professions Code section 4855 does not specifically require the onychectomy surgical method to be recorded in the medical records, and the Accusation does not otherwise indicate a violation of a specific regulation that requires the surgical method to be documented.

Second Cause for Discipline

9. Cause for discipline was not established for a violation of Business and Professions Code section 4883 for incompetence for leaving the postoperative bandages on Ryder, Abby, and Teeger, by reason of the matters set forth in Findings 4, 5, 7 through 9, 20, 22, 23, 28 through 36, 39, 41 through 44, 47, 50, and 51, and Legal Conclusion 5. Complainant argues that the post-surgery aftercare of the cats was a collaborative effort and shared responsibility between respondent as the relief veterinarian and Dr. Goraya as the on-duty veterinarian for the failure to timely remove the bandages. This argument is rejected. The evidence was not clear and convincing that removal of the post-operative bandages on Ryder, Abby, and Teeger at 48 hours was not timely. The allegation of incompetence by respondent was not established.

Fourth Cause for Discipline³

10. Cause for discipline was not established for a violation of California Code of Regulations, title 16, section 2032.05 for inhumane treatment of Ryder, Abby, and Teeger when respondent provided painkillers after the onychectomies, by reason of the matters set forth in Findings 4 through 6, 8, 10, 11, 20, 22, 26, 29, 30, 33, 34, 36, 39, 41, 43, 44, 47, 50, and 52, and Legal Conclusion 6. The evidence was not clear and convincing that respondent failed to provide humane treatment for the three cats by providing them with an insufficient amount of pain medications after their declawing procedures.

Fifth Cause for Discipline

11. Cause for discipline was not established for a violation of California Code of Regulations, title 16, section 2032.3, subsection (a)(9), for failing to record what type of drug he used to anesthetically induce Teeger for his onychectomy by reason of the matters set forth in Findings 4 through 6, 20, 35, 53, and 54, and Legal Conclusion 7. Teeger's surgery report

³ The third cause for discipline was stricken from the Accusation at commencement of the hearing.

shows that respondent documented IV administration of 10 mg/ml strength of Propoflo. Although respondent admitted he failed to document the amount of anesthesia administered to Teeger, section 2032.3, subsection (a)(9), does not require the amount of sedative or anesthetic agent to be documented in the surgical procedure records.

ORDER

The Accusation against respondent Glen Weber, DVM, Veterinarian License Number VET 4872, is dismissed.

IT IS SO ORDERED this 29th day of April, 2019.

This Decision shall become effective on May 29, 2019.



Jaymie Noland, DVM, President
Veterinary Medical Board
Department of Consumer Affairs
State of California

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8
9 **BEFORE THE**
VETERINARY MEDICAL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4602016000354

12 **GLEN WEBER**
13 **706 Saint George Road**
14 **Danville, CA 94526**

ACCUSATION

15 **Veterinarian License No. VET 4872**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Annemarie Del Mugnaio (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Veterinary Medical Board, Department of Consumer
22 Affairs.

23 2. On or about January 4, 1971, the Veterinary Medical Board issued Veterinarian
24 License Number VET 4872 to Glen Weber (Respondent). The Veterinarian License was in full
25 force and effect at all times relevant to the charges brought in this Accusation and will expire on
26 April 30, 2018, unless renewed.
27
28

1 13. On or about May 12, 2015, Owner Y brought his three cats (Abby, Teeger, and
2 Ryder) to San Ramon Veterinary Hospital for bilateral front paw onychectomies (declawing
3 procedures). Respondent performed the procedures.

4 14. There are three different surgical methods for performing a declawing procedure.
5 Respondent did not document which surgical method he used to declaw Abby, Teeger, and
6 Ryder.

7 15. Respondent failed to document the type of drug he used for Teeger's anesthetic
8 induction for the surgery.

9 16. After the declawing procedure, the area where the incision was made is usually
10 sutured or closed using surgical adhesive and the area is bandaged overnight to control the
11 bleeding. These bandages are typically placed securely but also loosely enough to allow for post-
12 surgical foot swelling. Respondent placed the bandages on Abby, Teeger, and Ryder too tightly,
13 causing restriction of the cats' blood supply and resulting in tissue necrosis and sloughing of paw
14 tissues.

15 17. At the time of surgery, the cats were provided with one injection of a short-acting (6-
16 8 hour) antibiotic. No further antibiotic shots were provided to the cats immediately after the
17 surgery. The cats' medical records do not document whether or not Respondent prescribed them
18 any additional antibiotics. Respondent did not provide the cats with a sufficient amount of
19 antibiotics to prevent or control infection at the time of the declawing procedures.

20 18. Declawing is typically a painful procedure, so a multimodal pain control is
21 recommended for cats undergoing declawing procedures. Respondent only provided Abby,
22 Teeger, and Ryan with meloxicam, a non-steroidal anti-inflammatory drug, at the time of surgery.
23 This pain medication usually lasts for 24 hours, and it is recommended that animals receive
24 additional oral doses of pain medication for up to 4 days after an operation. The cats did not
25 receive any additional pain medication until about May 15, 2015, three days after the surgery.
26 Respondent did not provide the cats with adequate pain medication before or after the declawing
27 procedures.

28

1 19. The cats remained at San Ramon Veterinary Hospital for approximately 8 days after
2 the declawing procedures for postoperative monitoring.

3 20. On or about May 21, 2015, Owner Y brought all three cats to the SAGE Center for
4 Veterinary Specialty and Emergency Care (SAGE) in Dublin, California for additional evaluation
5 of their front paws. All three cats were hospitalized for ongoing treatment due to complications
6 from the declawing procedures. The cats remained at SAGE for 21 weeks and received extensive
7 treatment that included surgical amputation of digits and treatment of infections.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Failure to Create Adequate Written Records)
10 (Bus. & Prof. Code, § 4855)

11 21. Respondent his Veterinarian License to discipline because he failed to keep sufficient
12 written records of all of the animals receiving his veterinary services. (Bus. & Prof. Code, §
13 4855.) Respondent failed to record which surgical method he used to perform onychectomies on
14 Ryder, Abby, and Teeger. The circumstances are further explained in paragraphs 12, 13, and 14.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Negligence
17 (Bus. & Prof. Code, § 4833, subd. (i))

18 22. Respondent has subjected his Veterinarian License to discipline because he acted
19 with incompetence when he placed postoperative bandages on Ryder, Abbey, and Teeger that
20 were too tight after their onychectomies. (Bus. & Prof. Code, § 4833, subd. (i).) The
21 circumstances are further explained in paragraphs 12, 13, and 16.

22 **THIRD CAUSE FOR DISCIPLINE**

23 (Negligence)
24 (Bus. & Prof. Code, § 4833, subd. (i))

25 23. Respondent has subjected his Veterinarian License to discipline because he acted
26 with incompetence when he failed to provide Ryder, Abbey, and Teeger with sufficient
27 antibiotics at the time of their onychectomies. (Bus. & Prof. Code, § 4833, subd. (i).) The
28 circumstances are further explained in paragraphs 12, 13, and 17.

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

DATED: September 11, 2017 Annemarie Del Mugnaio

ANNEMARIE DEL MUGNAIO
Executive Officer
Veterinary Medical Board
Department of Consumer Affairs
State of California
Complainant

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