

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING SECTION

August 29, 2012

Teresa Love, DVM
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Willington, CT 06279

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VIA EMAIL

RE: Teresa Love, DVM – Petition No. 2011-1305

Dear Dr. Love and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Connecticut Board of Veterinary Medicine** in the above-referenced matter.

Sincerely,

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Administrative Hearings Specialist/Board Liaison
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**STATE OF CONNECTICUT
CONNECTICUT BOARD OF VETERINARY MEDICINE**

Teresa Love, D.V.M.
Veterinarian license # 002558

Petition No. 2011-1305

MEMORANDUM OF DECISION

I. PROCEDURAL BACKGROUND

On February 1, 2012, the Department of Public Health (“Department”) filed a Statement of Charges (“Charges”) and Motion for Summary Suspension (“Motion”) dated January 25, 2012, with the Connecticut Board of Veterinary Medicine (“Board”). Board Exhs. 1, 2. Both the Charges and Motion against Teresa Love, D.V.M. (“Respondent”) allege that Respondent’s license is subject to disciplinary action under Connecticut General Statutes (“Statutes”) § 20-202. Board Exhs. 1, 2.

In its Motion, the Department alleges that Respondent’s continued practice of veterinary medicine represents a clear and immediate danger to the public’s health and safety. Board Exh. 2, p. 2.

On February 1, 2012, the Board granted the Motion and ordered Respondent’s license summarily suspended pending the Board’s final decision regarding the Charges. (Summary Suspension Order) Board Exh. 1, p. 3.

On February 1, 2012, the Charges, the Summary Suspension Order and a notice of hearing (“Notice”) were sent to Respondent by certified mail, return receipt requested, and by first class mail. Board Exh. 1. Per the Notice, the hearing before the Board was set for February 6, 2012. Id. at pp. 1-2.

On February 6 and March 12, 2012, the Board held an administrative hearing regarding the Charges, in accordance with Chapter 54 of the Statutes (Uniform Administrative Procedure Act (“UAPA”)) and Regs. Conn. State Agencies §§ 19a-9-1, et

seq. At the hearing, Respondent appeared pro se, and the Department was represented by Attorney Ellen Shanley. The parties availed themselves of the opportunity to present witnesses and argument.

During the hearing, the Department orally requested permission to amend ¶ 14 of the Charges (hereinafter referred to as the “Amended Charges”). Hearing Transcript. (“Tr.”) pp. 7-13 (Feb. 6, 2012); Board Exh. 4. Respondent did not object to Department’s request, which the Board then granted. *Id.*, p. 10, 12. The Department subsequently transformed the oral request into a written request, which it filed with the Board. Board Exh. 4.

At the outset of the hearing, Respondent orally answered the Amended Charges. Respondent admitted the allegations in ¶¶ 1-3, 8-10, 12, 14 and 15 thereof. Tr. pp. 14-18 (Feb. 6, 2012).

All Board members involved in this decision received copies of the entire record and attest that they heard the case or read the record in its entirety. The Board’s decision is based entirely on the record and the Board’s specialized professional knowledge in evaluating the evidence. See Conn. Gen. Stat. § 4-178; Pet v. Department of Health Services, 228 Conn. 651, 666 (1994).

II. THE ALLEGATIONS

In the Amended Charges, the Department claims as follows:

A. Both Counts

“[Respondent of Willington, Connecticut] is, and has been at all times referenced in [the Amended Charges], the holder of Connecticut veterinarian license number 002558.” Amended Charges ¶ 1 (Count One), ¶ 8 (Count Two).

B. Count One

a) “At all relevant times, [R]espondent practiced as a veterinarian in Willington, Connecticut.” *Id.*, ¶ 2.

- b) “At various times during 2011, [R]espondent failed to maintain proper control over controlled substances at her practice.” Id., ¶ 3.
- c) “During 2011, [R]espondent improperly used her prescriptive authority to maintain and/or obtain controlled substances.” Id., ¶ 4.
- d) “During September 2011 and/or December 2011, [R]espondent abused and/or utilized to excess controlled substances, including morphine.” Id., ¶ 5.
- e) “Respondent’s abuse of controlled substances does, and/or may, affect her practice as a veterinarian.” Id., ¶ 6.
- f) “The above-described facts constitute grounds for disciplinary action pursuant to [§ 20-202 of the Statutes].” Id., ¶ 7.

C. Count Two

- g) On August 24, 2011, the [Board] ordered a Consent Order in Petition Number 2007-200739 (hereinafter “Consent Order”) that placed [R]espondent’s veterinarian license on probation for a period of five years. Such disciplinary action was based upon [R]espondent’s admitted history of emotional disorders, and abuse and/or utilization of controlled substances to excess. Id., ¶ 9.
- h) Said Consent Order specifically provided that [R]espondent shall be responsible for submitting to urine screens for drugs; shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate purpose by an authorized, licensed, health care professional; that all urine screens be negative for controlled substances; that [R]espondent shall provide a copy of her Consent Order to the veterinarian with whom she was professionally associated; and that [R]espondent would agree to refrain from practice as a veterinarian for a period of up to 45 days, upon request by the Department. Id., ¶ 10.
- i) “During September 2011, [R]espondent failed to submit to a urine screen ordered by her therapist.” Id., ¶ 11.
- j) “During December 2011, [R]espondent’s urine screen tested positive for morphine.” Id., ¶ 12.
- k) “During December 2011, [R]espondent abused and/or used to excess, controlled substances, including morphine.” Id., ¶ 13.
- l) “During part of September and/or October 2011, and during December 2011, [R]espondent continued to practice as a veterinarian despite having been requested to refrain from practice for those periods by the Department.” Id., ¶ 14.

- m) “Respondent’s conduct as described above constitutes violations of the terms of probation as set forth in the Consent Order, and subjects [R]espondent’s license to revocation or other disciplinary action authorized by [§§ 19a-17 and 20-202 of the Statutes].” Id., ¶ 15.

III. FINDINGS OF FACT

1. Respondent, a resident of Willington, Connecticut is, and has been at all times relevant to these proceedings the holder of Connecticut veterinarian license number 002558. Tr. p. 14 (Feb. 6, 2012).
2. At all relevant times, Respondent practiced as a veterinarian at the Love Veterinary Center, which is located at 451 River Road, Willington, Connecticut (“Clinic”). Id.; Dept. Exh. 3, p. 1.
3. On August 24, 2011, the Board ordered a Consent Order that placed Respondent’s veterinarian license on probation for five (5) years. Said disciplinary action was based on Respondent’s admitted history of emotional disorders and/or utilization of controlled substances to excess. Tr. p. 16 (Feb. 6, 2012); Dept. Exh. 1.
4. Said Consent Order specifically provided, in part, that Respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate purpose by an authorized, licensed, health care professional; shall submit to random drug screening, the results of which must be negative for controlled substances; shall provide a copy of the Consent Order to the veterinarian with whom she was professionally associated; and shall agree to refrain from practicing as a veterinarian for a period of up to forty-five (45) days, upon Department’s request. Id.
5. The Department specifically advised Respondent to not eat foods containing poppy seeds since doing so may result in a urine test that is positive for morphine. Dept. 1, p. 4 (Consent Order ¶ 2.b(5).; Dept. Exh. 2, pp. 3-4.
6. The Department also instructed Respondent to provide it with a list of all the controlled substance medications that she was taking or which were prescribed to her. Id.
7. Department advised Respondent, and Respondent agreed that consumption of foods containing poppy seeds, mouthwash and over the counter cough medicine or other remedies that have not been prescribed will not be a defense for a urine test, which returns positive for opiates. Id.; Tr. pp. 87, 89 (Feb. 6, 2012); Dept. 1, p. 4 (Consent Order ¶ 2.b(5)).
8. At various times during 2011, Respondent failed to maintain proper control over controlled substances at the Clinic. Tr. p. 14 (Feb. 6, 2012); Dept. Exh. 3, pp. 3, 4, 7-21; Dept. Exh. 4, pp. 2-26.

9. All Clinic employees, including Respondent had access to the controlled substances, which were at the Clinic. Tr. pp. 42-44, 56 (Feb. 6, 2012).
10. At least two of Respondent's employees had not been trained on how to keep a log of controlled substances. Tr. pp. 56, 137 (Feb. 6, 2012).
11. On September 2, 2011, Respondent failed to submit to a urine screen that her therapist had requested. Dept. Exh. 2, p. 6; Tr. pp. 79, 80 (Feb. 6, 2012).
12. On September 7, 2011, Department requested Respondent to refrain from practicing as a veterinarian for forty-five (45) days, but Respondent practiced as a veterinarian within said forty-five (45) day period. Dept. Exh. 2, p. 6; Tr. pp. 33, 85 (Feb. 6, 2012).
13. On October 22, 2011, the Department lifted said forty-five (45) day "time-out" period. Dept. Exh. 2, p. 7; Tr. p. 85 (Feb. 6, 2012). During September and October 2011, respondent continued to practice as veterinarian despite having been requested by the Department to refrain from practice for those periods. Tr. pp. 18, 125-126 (February 6, 2012).
14. On September 6 and September 8, 2011, Respondent's urine samples had low creatinine and specific gravity values, indicating that Respondent had drunk excessive amounts of fluids just prior to specimen collection to internally diluted the samples. Dept. Exh. 2, p. 8; Tr. pp. 85-86 (February 6, 2012); Tr. pp. 24-25 (Mar. 12, 2012, Executive Session).
15. On November 22, and December 27, 2011, Connecticut Department of Consumer Protection, drug control agent Scott Stoppa found discrepancies in Respondent's controlled substance record keeping. Dept. Exhs 3, 4.
16. Agent Stoppa's audit of Respondent's 2010 and 2011 drug records revealed that Respondent could not properly account for 363 milliliters ("mls") of Hydromorphone 2 milligrams ("mg") /ml injections, and 333 mls of Morphine 15 mg/ml. Dept. Exh. 3, pp. 3-4.
17. On at least two occasions, Respondent prescribed Fentanyl patches for animals that did not require or receive the entire prescribed dose. Respondent used one patch out a box of five for each animal and ordered another box using the name of an employee's pet, which did not need the patches. Dept. Exh. 3, pp. 2, 9; Tr. pp. 113, 118 (Feb. 6, 2012).
18. Respondent kept the remaining Fentanyl with the stock of controlled substances in her storage box. Dept. Exh. 3, pp. 2, 9.
19. During 2011, Respondent improperly used her prescriptive authority to maintain and obtain controlled substances. Dept. Exh. 3, pp. 2, 9; Tr. pp. 18, 113, 118 (Feb. 6, 2012).

20. Respondent failed to maintain records of receipt and administration of controlled substances. Dept. Exh. 3, pp. 2, 3-4; Dept. Exh. 4, p. 2.
21. On December 6, 2011, Respondent's urine screen tested positive for opiates. Tr. p. 17 (Feb. 6, 2012); Dept. Exh. 2, pp. 8 and 9 (under seal).
22. On December 19, 2011, gas chromatograph-mass spectrometer testing confirmed that Respondent's December 6, 2011 urine screen was positive for morphine. Tr. pp. 78, 86 (Feb. 6, 2012); See also, Dept. Exh. 2, pp. 9 (under seal), 10 (under seal), 12.
23. Morphine clears the system in three (3) days and cannot be detected by a urine test thereafter. Tr. pp. 89-90 (Feb. 6, 2012).
24. During September and December 2011, Respondent abused and utilized to excess controlled substances, including morphine. Dept. Exh. 2, pp. 8, 9 (under seal), 10 (under seal), 11-12; Dept. Exh. 4, p. 2; Tr. pp. 48, 49, 52-53, 58-59, 87 (Feb. 6, 2012).
25. On December 22, 2011, pursuant to paragraph fourteen of the Consent Decree, the Department requested Respondent to refrain from practice for forty-five (45) days. Dept. Exh. 2, p. 12.
26. Despite the request, Respondent continued to practice as a veterinarian during said forty-five (45) day period. Dept. Exh. 4, pp. 1-2; Tr. pp. 18, 27-28, 125-128 (Feb. 6, 2012).
27. On December 27, 2011, Jolanta Gawinski, the Department's investigator, and two drug control agents from the Department of Consumer Protection, Richard Brooks and Scott Stoppa conducted an unannounced inspection of Respondent's Clinic. Tr. pp. 25-26, 30 (Feb. 6, 2012).
28. During the December 27, 2011 inspection, Respondent lied to the above-referenced investigators by telling them that she did not work as a veterinarian during said forty-five (45) day timeout period. Tr. pp. 27-28 (Feb. 6, 2012).
29. During the December 27, 2011 investigation, Clinic staff relayed to the investigators consistent accounts of Respondent's dramatic mood swings and erratic behavior. Also, Clinic staff stated that they had periodically found syringes and needles in the Clinic's private bathroom. Tr. pp. 29, 42, 48, 83 (Feb. 6, 2012).
30. Respondent's abuse of controlled substances affected and may continue to affect her ability to practice as a veterinarian. Tr. pp. 28-29, 42, 53, Feb. 6, 2012; see also Tr. pp. 19, 20 (Mar. 12, 2012, Executive Session).
31. Since January 10, 2012, Dr. Della Farney, a veterinarian working at the Clinic, has been the only person with access to controlled substances at Respondent's Clinic. Tr. pp. 45-46 (Feb. 6, 2012).

32. Jolanta Gawinski, Bonnie Pinkerton, Jessica Smith, Kathryn Dube, and Dr. Della Farney testified credibly.
33. The testimony of Respondent and Jeffrey Love was not credible regarding the matters in contention.
34. Dr. Alfred Herzog testified credibly; however, in light of the other evidence the Board is not persuaded by his opinion that “[Respondent] can practice veterinary medicine but not be allowed any access to opioid meds for a period of time to be determined by DPH/the Veterinary Board of Medicine”. Resp.. Exhs. 1, 2; Tr. pp. 14-15 (Mar. 12, 2012, Executive Session).

IV. DISCUSSION

The Board has jurisdiction over this matter.

[The Board] may take any of the actions set forth in section 19a-17 for any of the following causes: . . . (2) proof that the holder of such license or certificate has become unfit or incompetent . . . (10) physical or mental illness, emotional disorder or loss of motor skill . . .; [or] (11) abuse or excessive use of drugs, including alcohol, narcotics or chemicals. . . .

Statutes § 20-202.

“[Boards] may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with chapter 54 and the regulations established by the Commissioner of Public Health.” Statutes § 19a-10. The Department alleges that Respondent is a licensed veterinarian who has engaged in conduct violating Statutes § 20-202; thus, the Board has jurisdiction over this matter. Bd. Exh. 1.

The Department bears the burden of proving its case by a preponderance of the evidence in this administrative proceeding. Goldstar Medical Services, Inc. v. Dept. of Social Services, 288 Conn. 790, 821 (2008).

The Board has relied on its training and experience in making the findings of facts and conclusions of law set forth herein. Pet 228 Conn. 651 at 667.

The Board notes its grave concern that Respondent, a licensed professional who was on probation pursuant to the August 24, 2011 Consent Decree (Dept. Exh. 1) and, therefore, knew that her conduct was subject to increased scrutiny, consistently acted in a manner that called into doubt her compliance with the terms of the Consent Decree and her suitability to practice as a veterinarian.

Respondent admits the allegations in ¶¶ 1-3 of Count One and ¶¶ 8-10, 12, 14 and 15 of Count Two. These allegations are not in dispute and are only briefly discussed. Regarding the remaining allegations, as discussed below, the Board finds that Department has met its burden of proof; thus, Respondent's conduct constitutes grounds for disciplinary action under § 20-202 of the Statutes.

A. Count One

Regarding the allegations of Count One, Respondent admits that she holds Connecticut license no. 002558 to practice veterinary medicine and has been practicing at the Clinic in Willington, Connecticut. Tr. p. 14 (Feb. 6, 2012); Findings of Fact ("Findings") 1 and 2.

Respondent also admits that she failed to maintain proper control over controlled substances at the Clinic, as alleged in ¶ 3 of the Charges. Id.; Findings 8-10. Nevertheless, she attempts to temper her admission by claiming that she was not at the Clinic during various periods of time so she should not be held accountable for her failure. Specifically, she claims that the Department banned her from the Clinic for six (6) months and she was also away periodically undergoing inpatient rehabilitation. Tr. pp. 102-103 (Feb. 6, 2012). The Board is not persuaded by Respondent's claim.

Respondent's failure to control access to the controlled substances was systemic and inexcusable. Respondent was the only drug enforcement administration licensed

practitioner operating the Clinic. Dept. Exh. 4, p. 2. The Board finds that she was obligated to maintain control of the controlled substances at all times and Respondent's claims of ignorance regarding this requirement are not credible. Respondent did not testify or produce evidence that she took action to comply with her obligations while she was temporarily away from the Clinic. Findings 31. Respondent could have, among other things, sought to employ another person earlier who was licensed to handle controlled substances to manage the controlled substances at her practice. She also could have limited employee access to the storage box. Yet, despite the availability of other options and an obligation to do something Respondent failed to do anything until January 10, 2012. Id.

In addition, Respondent's failure to properly control the controlled substances went well beyond periods in which she was away from the Clinic. As late as December 27, 2011, Respondent had not assigned anyone with the responsibility to account for the controlled substances at the Clinic. Findings 9; Tr. pp. 103-104, 112-113, 117-118 (Feb. 6, 2012). Even more shockingly, all Clinic employees, including Respondent, had unfettered access to controlled substances. Findings 9. Further, only some Clinic employees had training regarding controlled substances logging procedures. Findings 10. Respondent's systemic failure to establish and maintain a control system for the controlled substances goes well beyond her periodic absences and is inexcusable.

As a result of Respondent's failure to properly account for and control access to the controlled substances some of the controlled substances remain unaccounted for. On November 22, 2011, drug control agent Stoppa found discrepancies in Respondent's controlled substance record keeping, explained to Respondent such discrepancies and how to prevent them. Findings 15; Dept. Ex. 3, pp. 3-4. Yet, a little over a month later, on

December 27, 2011 Mr. Stoppa found discrepancies again. Dept. Ex. 4, p. 2. Mr. Stoppa's inspections revealed that Respondent could not account for significant quantities of controlled substances. Findings 15; Dept. Ex. 3, pp. 3-4; Dept. Ex. 4, p. 2.

The Department has also sustained its burden of proving that Respondent improperly used her prescription writing authority to maintain and obtain controlled substances during 2011. Charges, ¶ 4; Findings 17-19. Respondent does not deny the material allegations of this paragraph instead she claims that she is not guilty because of ignorance. Tr. 104 (Feb. 6, 2012). Respondent, a licensed professional who claims she has been in the field sixteen (16) years, had to be aware of her obligations regarding controlled substances. Yet, on at least two occasions, Respondent prescribed Fentanyl patches for animals that did not require or receive all of the prescribed doses (Respondent used one patch out a box of five for each animal). Findings 17. Respondent also failed to properly maintain records of the receipt and administration of the controlled substances that she had administered. Findings 20. In addition, Respondent ordered Fentanyl patches using the name of one of her employee's pets even though the patches were not for that pet. Findings 17. Respondent's claim that she was using the leftover Fentanyl for "stock" and did not know that she could not do so is not credible and, regardless, does not vitiate the fact that she improperly used her prescriptive authority to obtain controlled substances. Findings 18. Therefore, the Department sustained its burden of proof regarding these allegations.

The Department also sustained its burden of proving that during September 2011 and December 2011, Respondent abused and utilized to excess controlled substances, including morphine as alleged in ¶ 5 of the Charges. Findings 24.

Respondent's: (1) failure to comply with the September 2, 2011 drug testing requirement; (2) subsequent adulteration of her urine sample; (3) mood swings and erratic behavior; (4) improvised tourniquet use; (5) failure to adequately explain the missing and unaccounted for controlled substances; (6) staff's finding a bottle of Fentanyl and other items suggestive of intravenous drug usage in the Clinic's staff bathroom; and (7) December urine test, which tested positive for morphine demonstrate that Respondent abused and utilized to excess controlled substances during September and December 2011. Findings 11; Tr. pp. 42, 49-50, 115 (Feb. 6, 2012). The Board finds that respondent "abuse and utilized to excess controlled substances" because she tested positive for morphine, even if it was in only one occasion, while she was under a Consent Order with the Department.

Respondent failed to properly comply with drug testing requirements to avoid detection of her drug use in September, 2011. On September 2, 2011, Respondent failed to comply with her Therapist's request to submit to a drug test. Findings 11. Drug testing must be performed on a timely basis to ensure drug-free compliance since three (3) days after using Morphine it clears the system and cannot be detected by a urine test. Findings 23. Just four (4) days after she failed to submit to a urine test, on September 6 and September 8, 2011, Respondent's urine samples had low creatinine and specific gravity values, indicating sample dilution. Findings 14. Because Respondent's urine sample collection was directly observed, adulteration was likely caused by Respondent's drinking excessive amount of fluids. Dept. Ex. 2, p. 8; Tr. pp. 17, 79, 85, 86 (Feb. 6, 2012). As discussed more fully below, Respondent's claim that she did not know about the September 2, 2011 test requirement is not credible. Findings 33. The missed screen in

close proximity to the adulterated screen indicates that Respondent was attempting to mask her drug use.

Respondent also improperly abused drugs in December, 2011. In late November early December 2011, staff found a bottle of Fentanyl in the bathroom trashcan. Tr. pp. 48, 49 (Feb. 6, 2012). Around the second Wednesday in December, Respondent was seen with a tourniquet to shoot “something into her arm” while at the Clinic. Id., pp. 48, 52-53. Clinic Staff saw Respondent with a make-shift tourniquet around her arm other times as well. Tr. pp. 75-76 (Feb. 6, 2012). In addition, Clinic staff witnessed Respondent exhibiting behavior consistent with the behavior of someone using drugs. Findings 29; Tr. pp. 29, 42, 53, 54, 72 (Feb. 6, 2012); Tr. pp. 19, 20 (Mar. 12, 2012, Executive Session). Then, on December 6, 2011, Respondent’s urine screen tested positive for morphine. Findings 21. Respondent knew that certain foods and medicines could result in a positive urine test and that she had waived the ingesting of any such foods or medicines as a defense. Findings 7. Moreover, Respondent offered no evidence demonstrating that the positive urine test in December resulted from anything other than her use of morphine. The sum total of the evidence leads the Board to conclude that the Department proved that Respondent abused and utilized to excess controlled substances, including morphine, as alleged in ¶ 5 of the Charges.

The Department has also sustained its burden of proving that Respondent’s use and abuse of controlled substances affected and may continue to affect her ability to practice as a veterinarian as set forth in ¶ 6 of the Charges. Respondent exhibited wild mood swings and erratic behavior. Findings 29; Tr. pp. 29, 53, 72 (Feb. 6, 2012). Respondent’s abuse had significant consequence in her practice of veterinary medicine. For instance, her clinic suffered from extreme disorganization specially in that she failed to

maintain records of receipt and administration of controlled substances. Findings 15-20. Respondent practiced during the time-out periods, and then lied to the Department and the two drug control agents investigators when she told them she has stopped practicing during the periods of time-out. Findings 13, 25, 26, 28. In light of these facts and the Board's expertise and experience, the Board finds that the Department has sustained its burden of proof with regard to these allegations.

B. Count Two

As mentioned above, Respondent admits the allegations in ¶¶ 8-10, 12, 14 and 15 of the Charges. In short these paragraphs allege that as a result of Respondent's admitted history of emotional disorders and abuse and/or utilization of controlled substances to excess, Respondent entered into a Consent Order with the Department and violated the terms of it. As alleged in ¶ 14, the Consent Order required Respondent to refrain from practicing veterinary medicine for up to forty-five (45) days if so requested by the Department; however, Respondent admits that she practiced veterinary medicine during part of September or October, 2011 and December, 2011 in violation of the Consent Order. Findings 3, 4, 12, 24-28; Tr. p. 18 (Feb. 6, 2012); see also; Dept. 2, p. 6; Tr. p. 33 (Feb. 6, 2012).

Respondent also admits that she violated the terms of the Consent Order by testing positive for morphine. Tr. p. 17 (Feb. 6, 2012). The Consent Order required Respondent to submit to urine screens and prohibited her from obtaining or using controlled substances except for a legitimate purpose. Findings 4. It also mandated that all of Respondent's urine screens must be negative for controlled substances. *Id.* Respondent's December 6, 2011 urine screen, which tested positive for morphine, clearly puts her in violation of the terms of the Consent Order.

The Board is not persuaded by Respondent's unsupported attempt to minimize the positive urine test. Essentially, Respondent suggests that the Board should disregard the finding since the result may have been caused by something other than controlled substance use, possibly eating Sociable crackers or something else, or in any case, it was a low positive and so not of great concern. Tr. p. 47 (Mar. 12, 2012). On December 22, 2011, the positive test result was confirmed by gas-chromatography/gas-spectrometry. Findings 22. Respondent presented no evidence contesting the test results or demonstrating that the results were a de minimus finding that should be ignored. Respondent argued that Sociable crackers have been found to test positive and that may have such consumption may have resulted in the December 6, 2011 positive morphine test. Tr. p. 47 (March 12, 2012); Resp. Exh 2. However, she did not testify as to what she actually consumed. Rather, she simply mentioned that she goes out to eat and does not know why the test was positive. Tr. p. 107 (Feb. 6, 2012); Tr. p, 47 (Mar. 12, 2012).¹ Moreover, since Respondent knew not to eat any foods containing poppy seeds because poppy seeds may cause a positive drug screen, Respondent's implied claim that the positive test result could have been caused by poppy seed ingestion is dubious at best. Dept. Ex. 2, p. 3.² Therefore, the Department has proven that Respondent failed the drug screen and, therefore, violated the Consent Order.

The Department also sustained its burden of proof regarding the allegations in ¶ 13. The allegations in ¶ 13 mirror those of ¶ 5, but are limited to conduct in December, 2011

¹ On Dec. 27, 2011, Respondent told Drug Control Agent Stoppa that the positive test was because she took some of her son's cough medicine. Agent Stoppa investigated and determined that the subject cough medicine did not contain morphine. Respondent had no response when Agent Stoppa informed her of his findings. Dept. 4, p. 2.

² As mentioned in Findings 7, per the Consent Order Respondent waived her ability to claim such consumption as a defense to a positive test.

instead of September and December, 2011. Thus, based on the Board's findings regarding the allegations in ¶ 5, as discussed supra, the Board finds that the Department has also met its burden of proof regarding these allegations.

The Board also finds that the Department has met its burden of proving that during September 2011 Respondent failed to submit to a urine screen as requested by her therapist. On September 2, 2011, someone informed Dr. Herzog, Respondent's therapist, that Respondent may be using controlled substances. Dept. Ex. 1, p. 6; Tr. pp. 79-80 (Feb. 6, 2012). After being unable to reach Respondent, Dr. Herzog spoke with Respondent's husband about Respondent going for a drug screen. Tr. pp. 129, 140 (Feb. 6, 2012). Respondent's husband, who is also the Clinic's office manager, left Respondent a message about his conversation with Dr. Herzog. Tr. p. 140 (Feb. 6, 2012). Nevertheless, Respondent failed to appear for the drug screen. Findings 11.

The Board is not persuaded by Respondent's claim that she did not miss the drug screening because she did not know about it. As an initial matter, the claim that the message was "garbled" is dubious at best. In essence, Respondent's claim here is based on her husband's claim that he thought that Dr. Herzog was "suggesting" instead of "requiring" a drug test; hence, presumably, his non-urgent, "garbled" message. This claim is undermined by the fact that when Dr. Herzog contacted him about the drug testing, he knew that his wife was on probation and would have to undergo drug testing per the terms of the Consent Order. Findings 33; Tr. pp. 134, 140-141 (Feb. 6, 2012). Also, the Board generally finds that Respondent's husband's testimony was not credible.

Respondent's reliance on the "garbled" message defense lacks merit. Respondent's testimony, like that of her husband, was not credible regarding this issue. Further, Respondent submitted no evidence suggesting that she tried to contact Dr. Herzog for

further clarification regarding the so-called “garbled” message. Respondent’s failure to follow-up is highly conspicuous since Respondent knew that she had just entered into the Consent Order and was obligated to undergo random drug screenings. In fact, the evidence suggests that Dr. Herzog had to reach out and contact Respondent on September 6, four days later, and request again that Respondent undergo a drug screening. Tr. pp. 80, 110 (Feb. 6, 2012). On September 2, 2011, Respondent was instructed to report for a drug test and failed to do so. The testimony of Respondent and her husband regarding lack of notice is not credible. As such, the Board finds that Respondent knew that she had to appear for a drug screen and failed to do so; therefore, the Department has met its burden of proof regarding this allegation.

Since the Department has proven its case with respect to each and every allegation, the Board must now decide the appropriate remedy.

For its part, the Department argues that the severity of Respondent’s actions merit revocation of her license. In support of its position, the Department notes that it has presented ample evidence demonstrating that Respondent failed to appropriately control and account for the controlled substances at her Clinic, Respondent abused and utilized to excess controlled substances and Respondent violated the Consent Order, by testing positive for morphine and continuing to practice as a veterinarian after the Department had asked her to refrain from doing so. The Department further notes that Respondent’s conduct occurred shortly after the Consent Order’s effective date. Tr. p. 40 (Mar. 12, 2012).

Respondent, on the other hand, requests that the Board allow her return to practice. Tr. p. 50 (Mar. 12, 2012), Respondent’s argument is that she is a good veterinarian, she did not use controlled substances, she did not know about the controlled substance control

requirements, she continued practicing because she wanted to help her clients and the detrimental witness testimony is inaccurate. *Id.*, at pp. 44-51. Respondent's claim, however, is severely undermined by the evidence demonstrating that Respondent abused controlled substances, failed to maintain proper control and accountability for controlled substances, violated the Consent Order by testing positive for morphine and working as a veterinarian when she was supposed to refrain from doing so and otherwise conducted herself in a manner suggesting that she is unfit to practice veterinary medicine.

In support of her position, Respondent relies on the testimony of Dr. Alfred Herzog, her psychiatrist, who opined that "[Respondent] can practice veterinary medicine but not be allowed any access to opioid meds for a period of time to be determined by DPH/the Veterinary Board of Medicine". Findings 34. Although well-meaning and well-credentialed, the Board affords little weight to Dr. Herzog's opinion since Dr. Herzog did not know all of the facts before forming his opinion. In addition, Dr. Herzog is not a veterinarian nor did he claim to know what is required to competently practice veterinary medicine. After considering Dr. Herzog's testimony the Board finds that it is not persuaded by Dr. Herzog's opinion that Respondent is safe to practice veterinary medicine if she has no access to controlled substances. See *Briggs v. State Employees Retirement Commission*, 210 Conn. 214, 217 (1989) (noting that the agency can believe or disbelieve an expert's testimony).

V. CONCLUSION

In light of the severity and nature of Respondent's proven misconduct the Board finds that severe action is warranted in this case. The Board further finds that the severe action ordered below would be warranted even if the Department had only proven those allegations that were admitted by Respondent.

ORDER

Based upon the record in this case, the above findings of fact and conclusions of law, and pursuant to the authority vested in it by §§ 19a-17(a) and 20-202 of the Statutes, the Board finds that the misconduct alleged and proven warrants the disciplinary action imposed by this order. The Board orders in Petition No. 2011-1305 that respondent's license number 002558 of Teresa Love, D.V.M. to practice as a veterinarian in the State of Connecticut is REVOKED.

This decision is effective upon signature by the Chair of the Board.

Connecticut Board of Veterinary Medicine

8/29/2012

Date

Mary Anne O'Neill
by: Mary Anne O'Neill, Esquire, Chairperson

CERTIFICATION

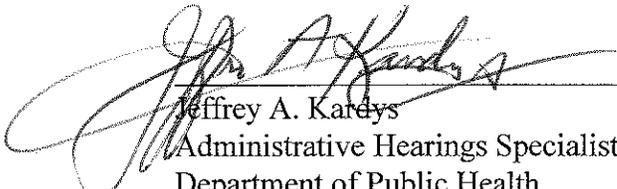
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was provided to respondent in-hand and was mailed this 29th day of August 2012, by certified mail, return receipt requested to:

Teresa Love, DVM
451 River Road
Willington, CT 06279

Certified Mail 91-7108-2133-3936-6420-2815

and via email to:

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office