

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF HEALTHCARE SYSTEMS**

In re: Marcus C. Sminkey, D.V.M.

Petition No. 2003-0325-047-005

CONSENT ORDER

WHEREAS, Marcus C. Sminkey, D.V.M. of Noank, Connecticut (hereinafter "respondent") has been issued license number 002653. to practice veterinary medicine by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 384 of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department alleges that:

1. Respondent provided care and treatment to Tigerlily, a cat owned by Michel Leyko.
2. During February 2002, Tigerlily was presented to respondent to be spayed.
3. During February 2002, respondent operated on Tigerlily.
4. In providing such care and treatment to Tigerlily, respondent failed to properly treat Tigerlily and perform a complete spay or ovarian hysterectomy; and/or, failed to keep adequate and/or accurate records of Tigerlily.
5. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-202.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter and agrees that for purposes of this or any future proceedings before the Connecticut Board of Veterinary Medicine (hereinafter "the Board"), this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14, and 20-202 of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17, and 20-202 of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent's license shall be placed on probation for one year under the following terms and conditions:
 - a. Respondent shall obtain at his own expense, the services of a veterinarian, pre-approved by the Department (hereinafter "supervisor"), to conduct a monthly random review of twenty percent (20%) or ten (10) of respondent's female, feline neutering surgical cases, whichever is the larger number, for the first six months of his probation, and quarterly thereafter for the remainder of the probation. In the event respondent has fewer than ten (10) female, feline neutering surgical cases, the supervisor shall review all of respondent's feline neutering records
 - (1) Respondent's supervisor shall meet with him not less than once every month for the first six months of his probation, and not less than once every quarter for the remainder of his probation.
 - (2) The supervisor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.
 - (3) Respondent shall be responsible for providing written supervisor reports directly to the Department monthly for the first six months of his probationary period and quarterly thereafter. Such supervisor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the patient records and patient medication orders, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety.

- b. During the probationary period, respondent shall attend and successfully complete a total of twenty (20) hours of coursework in neutering female felines, pre-approved by the Department, which coursework may include observing feline neutering at an accredited veterinary school. Within thirty days of the completion of such coursework, respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such course(s).
 - c. During the probationary period, respondent shall perform and successfully complete six (6) female feline neuterings, observed by either his supervisor or a pre-approved professor of surgery from an accredited veterinarian school. Within thirty days of the each such observed neutering, respondent shall provide the Department with proof, to the Department's satisfaction, from the observer, of the successful completion of the neutering.
3. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308
4. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.
5. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.
6. Respondent shall pay all costs necessary to comply with this Consent Order.
7. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:

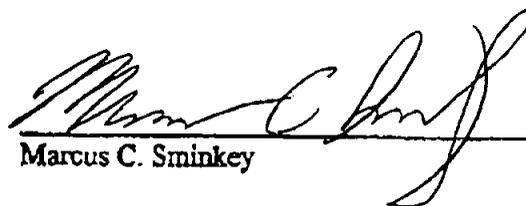
- a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
 - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
 - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 7a above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, he shall be entitled to a hearing before the Board which shall make a final determination of the disciplinary action to be taken.
 - e. Evidence presented to the Board by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.
8. In the event respondent violates any term of this Consent Order, respondent agrees immediately to refrain from practicing as a veterinarian, upon request by the Department, with notice to the Board, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation and to submit to and complete a medical evaluation, if requested to do so by the Department; and, that the results of the evaluation shall be submitted directly to the Department. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent

stipulates that failure to cooperate with the Department's investigation shall constitute an admission that his conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).

9. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license before the Board.
10. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Office of Practitioner Licensing and Certification of the Bureau of Healthcare Systems of the Department.
11. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted and ordered by the Board.
12. Respondent understands this Consent Order may be considered as a public document and evidence of the above admitted violations in any proceeding before the Board in which his compliance with this Consent Order is at issue.
13. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.
14. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.
15. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.

16. Respondent permits a representative of the Legal Office of the Bureau of Healthcare Systems to present this Consent Order and the factual basis for this Consent Order to the Board. Respondent understands that the Board has complete and final discretion as to whether this executed Consent Order is approved or accepted.
17. Respondent understands and agrees that he is responsible for satisfying all of the terms of this Consent Order during vacations and other periods in which he is away from his residence.
18. Respondent has the right to consult with an attorney prior to signing this document.
19. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.

I, Marcus C. Sminkey, have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.



Marcus C. Sminkey

Subscribed and sworn to before me this 8th day of November 2004.

MARK TILLINGHAST
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 2005

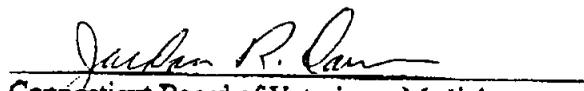

Notary Public or person authorized
2005 by law to administer an oath or affirmation

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 10th day of November 2004, it is hereby accepted.



Marianne Horn, Director
Division of Health Systems Regulation
Bureau of Healthcare Systems

The above Consent Order having been presented to the duly appointed agent of the _____ on the 10 day of November 2004, it is hereby ordered and accepted.



Connecticut Board of Veterinary Medicine

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TOTAL P. 08

TOTAL P. 02



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

January 6, 2006

Marcus C. Sminkey, D.V.M.
2 Elm Street
Route 215
Noank, CT 06340

Re: Consent Order
Petition No. 2003-0325-047-005
License No. 002653

Dear Dr. Sminkey:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective December 1, 2005.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Consent Order.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process.

Respectfully,

A handwritten signature in black ink, appearing to read "Olive Tronchin", with a long horizontal flourish extending to the right.

Olive Tronchin, HPA
Office of Practitioner Licensing and Investigation

cc: Jennifer Filippone



Phone: (860) 509-7400
Telephone Device for the Deaf (860) 509-7191
410 Capitol Avenue - MS # 12HSR
P.O. Box 340308 Hartford, CT 06134
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