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NEVADA STATE BOARD OF PHARMACY

985 Damonte Ranch Parkway, Suite 206 - Reno, NV 89521 - (775) 850-1440

APPLICATION FOR VETERINARIAN AUTHORITY TO DISPENSE DRUGS

What types of drugs will you be dispensing?

☐ Controlled Substances ☐ Dangerous Drugs ☒ Both

Do you, as a dispensing practitioner or in conjunction with other practitioners, wholly own your practice? Yes ☐ No ☐
If no, please complete the Application for Non-Practitioner Dispensing Site Owners as required by NAC 639.742 (2).

Personal Information

First: Melissa Middle: Ann Last: Tyson

Date of Birth: [redacted] SSN: [redacted] Sex: ☐ M or ☒ F

Email Address: [redacted] Degree: DVM Practitioner License #: 2626

(You MUST be licensed with your respective BOARD before we will process this application.)

Practice Information (Submit addresses for all other dispensing sites on a separate sheet.)

Practice Name (if any): _____

Practice Address: 37 Olympia Hills Circle Las Vegas State: NV Zip: 89141

(This must be a Nevada practice address. A license will not be issued to a home or a PO Box address.)

Work Telephone: 626.616.7864 Work Fax: _____

Personal and Professional History	Yes	No
1. Have you been diagnosed or treated for any mental illness, including alcohol or substance abuse, or physical condition that would impair your ability to perform the essential functions of your license?		✓
2. Have you been charged, arrested or convicted of a felony or misdemeanor in any state?		✓
3. Have you been the subject of an administrative action whether completed or pending in any state?	✓	
4. Has your license been subjected to any discipline for violation of pharmacy or drug laws in any state?		✓

If you marked YES to any of the number questions (2-4) above, include the following information and provide documentation:

Board Administrative Action:	State:	Date:	Case #:
	CALIFORNIA	01/08/2018	4602017000560

Criminal Action:	State:	Date:	Case #:	County:	Court:

Payment: Submit with this application a fee of $150 by providing your credit or debit card information below or by submitting a check for $150 made payable to **Nevada State Board of Pharmacy**

Credit Type: ☐ Visa ☐ Mastercard ☐ Discover ☐ American Express Exp Date: __/__ (MM/YY) Amount Charge: $150

Credit Card #: _____ CVV (3 digits on back of card): _____ Billing Zip: _____

I hereby certify that the answers given in this application are true and correct to the best of my knowledge. I understand that the approval of this application provides me alone with the authority to dispense controlled substance or dangerous drugs or both to my own patients at the address stated on the application. I further understand that I may not delegate this authority to any other person. I further agree to abide by all statutes, rules or regulations governing practitioner dispensing and understand that a violation of any such statute, rules or regulations may be grounds for suspension or revocation of this permit of authorization.

[redacted] 12.25.19

Original Signature, no copies or stamps accepted. Date

Board Use Only Received: _____ Amount: _____

RAY NEWMAN
Law Offices of Ray Newman
236 West Mountain Street, Unit 119
Pasadena, California 91103
(626) 440-9433
raynew456@sbcglobal.net

December 23, 2019

Nevada State Board
Of Veterinary Medical Examiners
4600 Kietzke Lane
Building O-#265
Reno, Nevada 89502

Re: Dr. Melissa Ann Tyson, License No. 2626

Dear Sir/Madame:

I am submitting this letter to clarify a mistake in Dr. Melissa Ann Tyson's renewal application. Dr. Tyson became embroiled in a dispute with the California Department of Food and Agriculture whereby the aforesaid state agency filed a lawsuit against her in the Los Angeles County Superior Court. As her attorney in the California action, I filed a motion to dismiss the action for failure to state a valid cause of action. The matter was eventually dismissed by the aforementioned California state agency.

Sometime later, the state of California decided to file different charges, requesting an administrative hearing to avoid the legal requirements imposed by a superior court filing. At the time Dr. Tyson filed her application, I had advised her that the matter would be quickly dismissed. Acting under that impression caused by my erroneous advice, Dr. Tyson was under the impression that this matter would be quickly dismissed like the previous action so she checked the box "no action pending" under a misapprehension of her legal situation caused by me.

Dr. Tyson is extremely sorry for any confusion her mistaken answer may have caused. The appeal of that matter is presently pending.

I would also like to point out that none of the California state actions filed against Dr. Tyson had anything to do with medical knowledge or ability as a veterinarian

If I can be of further assistance please feel free to contact me

Very truly,

Ray Newman

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

In the Matter of the Accusation Against:

MELISSA ANN TYSON, DVM,

Veterinary Medical License No. VET 13995,

and

CROWN CITY VETERINARY MEDICAL GROUP, INC.,

MELISSA ANN TYSON, DVM, Managing Licensee,

Premises Permit No. HSP 5890,

Respondents

Agency Case No. 4602017000560

OAH No. 2018051074

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Veterinary Medical Board as its Decision in the above-entitled matter, except that, pursuant to

Government Code section 11517, subdivision (c)(2)(B), the prosecution costs totaling $20,410 are reduced by $5,102.50 to reflect Respondents' successful challenge to the second cause for discipline under Business and Professions Code section 4883, subdivisions (d), (g), and (j), reducing the total amount of prosecution and investigative costs ordered to be paid by Respondents from $26,043.75 to $20,941.25, and, pursuant to Government Code section 11517, subdivision (c)(2)(C), the following minor and technical errors are corrected:

1. Page 2, second paragraph, first line, after "General," insert "Office of the Attorney General, Department of Justice, State of California,"; and remove and replace "complainant" with "Jessica Sieferman, in her official capacity as Executive Officer (complainant) of the Veterinary Medical Board (Board), Department of Consumer Affairs, State of California."

2. Page 21, paragraph 54.B., first line, remove and replace "tum" with "turn".

This Decision shall become effective on November 22, 2019.

IT IS SO ORDERED on October 23, 2019.

Jaymie Noland, DVM, President
VETERINARY MEDICAL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

In the Matter of the Accusation Against:

MELISSA ANN TYSON, DVM

CROWN CITY VETERINARY MEDICAL GROUP, INC.

Veterinary Medical License No. VET 13995

CROWN CITY VETERINARY MEDICAL GROUP, INC.

MELISSA ANN TYSON, DVM, Managing Licensee

Premises Permit No. HSP 5890

Respondents

Agency Case No. 4602017000560

OAH No. 2018051074

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 26-29, 2018, and May 20-24, 2019, in Los Angeles.[1]

Gillian E. Friedman, Deputy Attorney General, represented complainant.

Ray Newman, Attorney at Law, represented respondents Dr. Melissa Tyson and Crown City Veterinary Medical Group, Inc.

The record was held open after the hearing for the submission of closing briefs from the parties in the other consolidated matter. The events that transpired while the record was held open are described in the ALJ's orders marked for identification as exhibits 17 and 18.

The record was closed and the matter submitted for decision on August 27, 2019.

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[1] This matter was consolidated for hearing with OAH case number 2018051076, a matter before the California Department of Food and Agriculture. At the parties' request in both matters, separate proposed decisions are being issued. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)

SUMMARY

It was clearly and convincingly established that Dr. Melissa Tyson (respondent Tyson) knowingly violated a quarantine order issued by the California Department of Food and Agriculture due to an outbreak of Equine Herpes Myeloencephalopathy (EHM), a potentially deadly neurologic disease associated with the highly contagious Equine Herpes Virus-1 (EHV-1), by removing a horse, Emmy, from the Los Angeles Equestrian Center (LAEC). At the time of her removal, Emmy was exhibiting signs of EHM; a nasal swab test taken earlier that day was later confirmed positive for EHV-1.

Thereafter, respondent Tyson obstructed the efforts of the California Department of Food and Agriculture (CDFA) to locate Emmy. Respondent Tyson failed to disclose the horse's location, had documents falsified, and perjured herself in declarations filed in court. Respondent Tyson eventually euthanized Emmy, who had by that time recovered from her EHV-1 infection, in order to cover up the false statements in her declarations filed in court.

Respondents' actions were unprofessional and deceptive, in violation of the Business and Professions Code, and constitute grounds to discipline respondents' licenses. Respondents' various denials and defenses to the charges of the Accusation were unpersuasive. Respondent Tyson showed little rehabilitation and no remorse for her misconduct. Under the circumstances, revocation of respondents' licensing rights is warranted, as well as an order that they reimburse the Board its reasonable costs in investigating and prosecuting this matter in the amount of $26,043.75. However, an additional $5,000 fine against respondents is unwarranted.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Annemarie Del Mugnaio, then the Executive Officer of the Veterinary Medical Board (Board), brought the Accusation on January 8, 2018, in her official capacity. When the matter came to hearing, Jessica Sieferman was the Board's Executive Officer. Both individuals are referred to herein as complainant.

2. On or about January 16, 2018, respondents filed a Notice of Defense, which requested a hearing to contest the Accusation.

3. On May 25, 2000, the Board issued Veterinary Medicine License Number VET 13995 to respondent Tyson. The license was in full force and effect at all times relevant and will expire on October 31, 2020, unless renewed.

4. On November 24, 2003, the Board issued Premises Permit Number HSP 5890 to Crown City Veterinary Medical Group, Inc., with respondent Tyson as the managing licensee (respondent Crown City). The permit was in full force and effect at all times relevant and will expire on May 31, 2020, unless renewed.

Respondents' Background Information

5. Respondent Tyson is from a well-respected family that has lived in the Pasadena area for many years. Her father was a long-time physician and heavily involved in the civil rights movement. Her two sisters and brother are medical doctors. She is married and has four young children.

6. Respondent Tyson received veterinarian degrees from Washington State University and Oregon State University. She has no prior history of discipline by the Board.

7. Respondent Tyson is also accredited by the United States Department of Agriculture (USDA) as an Animal and Plant Health Inspection Services (APHIS) veterinarian. (Ex. 221.) As such, respondent Tyson received training and authorization to be involved in the National Animal Health Surveillance System, including efforts to prevent, control or eliminate equine diseases. (Ex. 222.)

8. Respondent Crown City is owned and operated by respondent Tyson. It is located in Pasadena in an award winning architecture design building. In 2016, just before the events in question, respondent Crown City employed six to nine people, and also provided opportunities for a number of interns and volunteers.

9. Respondent Crown City worked in partnership with the Asper de Tyson Foundation and Sanctuary (the Foundation), which is a non-profit organization dedicated to providing a safe haven for rare and neglected animals, including service dogs and horses. The Foundation is supported almost exclusively by respondent Tyson and her husband. (Ex. 211.)

10. Respondent Tyson has a love of horses which began with a riding career at the Eaton Canyon Stables in Pasadena from an early age until she went away to college. Her love of horses is one reason she became a veterinarian. Respondent since has owned many horses. She has been a member of various riding clubs throughout Southern California for most of her life.

11. Respondent Tyson and her family were formerly members of the Flintridge Riding Club, located in La Canada-Flintridge, adjacent to Pasadena. They

joined the club sometime in 2015. In May 2016, Respondent Tyson and her four children filed a lawsuit against the Flintridge Riding Club and two of its employees after an incident that occurred at the club on September 5, 2015. Respondent Tyson alleged she and her family were traumatized, subjected to emotional distress, discriminated against, and had their civil rights violated by club members on the basis of their race. (Ex. 200.) The club reached an undisclosed, confidential settlement with the family in or around September 2016, and the case was dismissed. (*Ibid.*) The relevance of these events is explained in respondents' mitigation argument below concerning her subsequent diagnosis of post-traumatic stress disorder.

The Los Angeles Equestrian Center

12. On a date not established, respondent Tyson had her horses stabled at LAEC, located in Burbank.

13. LAEC is a large equestrian club, with up to 600 horses stabled there. LAEC boards horses for private owners and trainers, including show horses and those involved in polo matches. There are six barns, known as Barns A through F. Each barn can accommodate many horses. For example, during the events in question, Barn C stabled 76 horses. LAEC holds horse shows and events open to the public; it also rents out its facilities for private parties and classes.

14. In October 2016, respondent Tyson wrote a letter to LAEC, on respondent Crown City's letterhead, complaining about a number of husbandry, health and maintenance concerns in the stable and barn areas. (Ex. 201.) Respondent Tyson concluded that her concerns could become health risks if not managed correctly. (*Ibid.*) However, respondents failed to show factual support for respondent Tyson's concerns noted in the complaint letter. In fact, of the other witnesses who testified

about LAEC, including three people involved in the horse community but otherwise unaffiliated with LAEC (Christopher Slauson, Kathleen Baker, Kathleen Hobstetter), none had any negative comments. Moreover, several CDFA veterinarians, who were at LAEC frequently during the events in question, did not offer any criticism about the cleanliness of LAEC or safety of the horses boarded there.

15. A. On September 11, 2016, Christopher Slauson, a horse sales agent in Bakersfield, sold a four-year-old bay filly named "Emma" to respondent Tyson for $1,500. (Ex. 152, p. 4.) The horse was thereafter referred to as "Emmy." Respondent Tyson also bought another horse from Mr. Slauson for $8,600. (Ex. 215.)

B. Emmy and the other horse were ostensibly purchased by respondent Tyson on behalf of her sister Maureen Tyson, who in turn would give them to respondent Tyson's two daughters. However, respondent Tyson was the only person who negotiated with Mr. Slauson, signed the purchase contract, took possession of Emmy, and made all the decisions regarding Emmy's care. In fact, it was not established that Maureen Tyson or respondent Tyson's daughters ever saw Emmy.

C. Respondent Tyson decided to stable Emmy at LAEC; she was boarded in Barn C in November 2016. She advised LAEC staff that she was Emmy's veterinarian. (Reporter's Transcript (RT), Vol. VIII, 48:19-20; ex. 114, p. 3.)

Outbreak of Equine Herpes Virus-1 at LAEC

16. EHV-1 is a highly contagious disease that can spread quickly among horse populations. (Ex. 138, p. 2.) EHV-1 is spread through direct horse-to-horse contact and indirectly through objects contaminated with the virus, such as clothing, human hands, tack, trailers, feed, and wash rags. (Ex. 138, p. 2.) Horses that become infected with EHV-1 usually develop a fever. They may also develop EHM, a neurologic

disease condition that may lead to death. (Ex. 155, p. 2.) Neurologic signs of EHM include decreased coordination, lethargy, and weakness. (*Ibid.*)

17. Because there is no vaccine to prevent EHM, immediate separation and isolation of horses suspected to be infected with EHV-1 and implementation of appropriate biosecurity measures are key elements of disease control. (Ex. 138, p. 2; ex. 155, p. 2.)

18. On November 3, 2016, two horses in Barn A at LAEC were confirmed positive for EHV-1 and diagnosed with EHM. (Ex. 138, p. 2.)

Legal Powers to Quarantine Animals

19. Food and Agricultural Code section 9562 gives the State Veterinarian broad authority to impose a quarantine whenever she reasonably suspects a population of domestic animals carries a potentially deadly contagious disease that could spread if those animals are not moved, segregated, isolated, held in place, or destroyed.

20. Pursuant to Food and Agricultural Code section 9564, if it is necessary to restrict the movements of animals pursuant to Food and Agricultural Code section 9562, the State Veterinarian may fix and proclaim the boundaries of a quarantine area in lieu of separate, individual orders issued to each owner pursuant to section 9562. While the boundaries are in force, it is unlawful for any person to move or allow to be moved any animals from or within the boundaries of the quarantine area, unless that person is authorized by the State Veterinarian.

21. When the State Veterinarian quarantines a population of domestic animals pursuant to Food and Agricultural Code section 9562, she is required to issue

a written notice of required action pursuant to quarantine (quarantine order) and serve that quarantine order upon the legal owner of the population of animals, the legal owner's agent, a person with immediate control over the population of animals, or a person with immediate control over the premises at which the population of animals is or has been located. (Cal. Code Regs., tit. 3, §§ 1301, subd. (o), 1301.1.)

22. Under Food and Agricultural Code sections 9563 and 9691, it is unlawful for any person to remove any animal from any premises that has been quarantined pursuant to Food and Agricultural Code section 9562 without the State Veterinarian's permission.

23. Pursuant to Food and Agricultural Code section 9695, it is unlawful for any person to hide or conceal any animal that is suffering from, or has been exposed or potentially exposed to, any disease subject to a quarantine order or to fail to disclose the whereabouts of that animal.

The Quarantine at LAEC

24. In light of the confirmed cases of EHM, on November 3, 2016, CDFA equine veterinarian Katherine Flynn, the designee of Dr. Annette Jones, the State Veterinarian, issued a quarantine order for all horses stabled in LAEC's Barn A, pursuant to Food and Agricultural Code section 9562. (Ex. 109, p. 1; ex. 138, pp. 2-3.)

25. The quarantine order required that enhanced biosecurity measures be implemented for all horses stabled in Barn A, including taking their temperatures twice daily, testing febrile horses (those with a fever) for EHV-1, and isolating any horse exhibiting signs of EHM before receipt of the EHV-1 test results. (Ex. 109, pp. 2-3.) George Chatigny, in his capacity as general manager of LAEC, signed and accepted

service of the quarantine order for Barn A. (Ex. 109, p. 1.) There was no appeal from this or any other quarantine order issued to LAEC.

26. On November 4, 2016, respondent Tyson traveled to LAEC to vaccinate Emmy. The following day, Emmy's trainer, Renee Baker, informed Dr. Flynn that Emmy had developed a fever. Dr. Flynn called respondent Tyson to confirm the vaccination as a potential cause of fever and the two discussed their differing opinions on whether to vaccinate horses in the face of an EHM outbreak. (Ex. 128, p. 3.)

27. On November 8, 2016, a horse in Barn B tested positive for EHV-1 and a horse in Barn C became febrile. In light of the ease of movement between the two barns, Kent Fowler, a veterinarian, CDFA's Animal Health Branch Chief, and a designee of State Veterinarian Annette Jones, issued an order that expanded the quarantine order to cover all horses stabled in Barns B and C, which included Emmy. (Ex. 110, p. 1; ex. 111, p. 25.) Mr. Chatigny signed and accepted service of the quarantine order for Barns B and C. (Ex. 110, p. 1.) The febrile horse from Barn C (not Emmy) later tested positive for EHV-1. (Ex. 111, p. 29.)

28. The CDFA and LAEC informed LAEC clients and the general public about the quarantine, including sending e-mails with quarantine updates to horse owners who stabled horses there, holding informational meetings with interested parties, and publishing updates on the CDFA's website. In addition, there were signs, caution tape, barricades, notices and warnings in, on, and around all of the barns that were under quarantine. (Exs. 111 & 113.)

29. Specifically with respect to respondent Tyson, LAEC sent the quarantine updates to the e-mail address on her boarding agreements. (RT, Vol. II, 204:9-23, 207:11-19; exs. 112 & 173.) As of November 22, 2016, there were numerous signs and

warnings posted at LAEC that Barn C was under quarantine. (Ex. 138, p. 2; ex. 139, p. 2.) The CDFA also prominently posted the quarantine order for Barns B and C on the side of Barn C.

30. On November 22, 2016, Emmy developed a fever and exhibited mild to moderate neurologic signs consistent with EHM. In the presence of Dr. Alisha Olmstead, an equine veterinarian with the CDFA, Dr. Michael Peralez confirmed Emmy had a fever. Dr. Peralez is an experienced independent equine veterinarian with extensive experience diagnosing horses with EHM, whom the CDFA had previously authorized to evaluate symptomatic horses pursuant to its regulatory authority. Dr. Peralez performed a neurologic assessment of Emmy, collected a blood sample, and nasal swabbed Emmy for testing for EHV-1. (Ex. 118, p. 1; ex. 155, p. 3.) Both Dr. Peralez and Dr. Olmstead testified that Emmy was uncoordinated, lethargic, and very weak during the neurologic exam, behavior symptomatic of EHM. (RT, Vol. II, 59:2-10; RT, Vol. III, 116:6-23, 120:14-25.) Consequently, the CDFA decided to place Emmy into isolation pending the EHV-1 test results. (Ex. 122, p. 1.)

Respondent Tyson Removes Emmy from Quarantine at LAEC

31. Before the CDFA placed Emmy into isolation that day, November 22, 2016, Emmy's trainer, Renee Baker, advised Dr. Olmstead that respondent Tyson, once she learned of the isolation decision, would "push back" and so should be contacted. (RT, Vol. II, 57:22-58:1; ex. 122, p. 1.) Dr. Olmstead then asked Animal Health Branch Chief, Dr. Fowler, to call respondent Tyson.

32. Dr. Fowler reached respondent Tyson on her cellphone as she was driving to LAEC on November 22, 2016. Respondent Tyson had already intended to remove Emmy from LAEC before embarking on that trip; she had a horse trailer

attached to the truck she was driving. Dr. Fowler informed respondent Tyson that Emmy had displayed a fever and mild to moderate neurologic signs consistent with EHM; that she had been nasal swabbed and blood sampled for EHV-1; and that she would be moved to the isolation stall pending the results of testing. (Ex. 126, p. 1; ex. 138, p. 2.) Respondent Tyson responded that she was on her way to remove Emmy from LAEC, was familiar with the current status of the quarantine efforts at LAEC, was going to implement her own quarantine of Emmy (which she stated superseded that of the state), and was willing to pay a fine for violating the quarantine at LAEC. (RT, Vol. I, 122:2-8, 123:6-11; ex. 126, p. 1, ex. 220, p. 3.)

33. Respondent Tyson testified that Dr. Fowler was abusive toward her during this call. The telephone call was put on a speaker by Dr. Fowler so Dr. Flynn, who was in the room with him, could hear. While the conversation became contentious, it was respondent Tyson who turned it in that direction. For example, when Dr. Fowler told respondent Tyson the number of horses already placed in isolation, respondent Tyson told him, "You do not know what you are talking about. . . ." (Ex. 126, p. 1.) Dr. Fowler responded, "You cannot count, there has never been more than 12 horses in isolation and currently there are 10 horses in isolation." (*Ibid.*) At that point, respondent Tyson accused Dr. Fowler of being "abusive," which was not the case.

34. After that conversation, Dr. Fowler called Dr. Olmstead and instructed her to contact law enforcement, since respondent Tyson had threatened to violate the quarantine order. Dr. Olmstead saw respondent Tyson arrive and watched her go to Emmy's stall in Barn C without complying with the quarantine's biosecurity measures. (Ex. 155, p. 3.) In fact, when told of the biosecurity measures, respondent Tyson told Dr. Olmstead that she would not comply "with your silly little rules." Dr. Olmstead told

respondent Tyson that Emmy was under quarantine. Respondent Tyson told Dr. Olmstead that she, respondent Tyson, was a state veterinarian; she was going to put Emmy in her own quarantine; her quarantine superseded the CDFA's quarantine; and she was going to remove Emmy from LAEC and take her home to be with her other horses. (RT, Vol. II, 62:10-15, 70:4-6; ex. 122, pp. 2-3.)

35. Without permission to do so, respondent Tyson then walked Emmy out of Barn C without complying with biosecurity measures, moved quarantine barricades out of the way, and loaded Emmy into the horse trailer attached to her truck.

36. A. Respondent Tyson testified that she removed Emmy from LAEC because she felt threatened by "a mob" of onlookers during an onsite evaluation of Emmy she did in the aisle-way outside Emmy's stall in Barn C. She therefore decided to evaluate Emmy off-site. (RT, Vol. VII, 117:3-8, 117:17-22.)

B. But her testimony is contradicted by Dr. Olmstead's testimony that respondent Tyson never attempted to perform a neurologic evaluation of Emmy at LAEC, there was no one threatening her when she was in Barn C, and there were no bystanders until respondent Tyson had already left Barn C and was loading Emmy into her trailer in the parking lot. (RT, Vol. II, 62:18-23, 63:23-25.)

C. Respondent Tyson's testimony is also contradicted by a declaration she signed in the civil case brought against her by the CDFA, discussed in more detail below. Under penalty of perjury, she described performing an evaluation of Emmy in Barn C, but wrote nothing about being harassed or confronted there by a mob or any individual. (Ex. 141, p. 2.)

D. Respondent Tyson's testimony is also contradicted by Dr. Fowler's testimony and written notes indicating respondent Tyson told Dr. Fowler she planned

to remove Emmy during his conversation with her before she arrived at LAEC on November 22, 2016.

E. Finally, respondents' medical records for Emmy indicate that, prior to arriving at LAEC on November 22, 2016, respondent Tyson already had told Emmy's trainer, Ms. Baker, that she would take Emmy to respondent Crown City's clinic if she found her to be febrile upon arrival; and told Caryn McDaris, an employee of LAEC, that "Emmy would be leaving the property today." (Ex. 220, p. 3.)

F. Under these circumstances, respondent Tyson's version of events is not credited.

37. Videos taken after respondent Tyson loaded Emmy into her trailer in the parking lot show respondent Tyson confronted by a handful of bystanders, who were telling her she was violating the quarantine order. (Ex. 121.) During that exchange, one bystander told respondent Tyson she was "breaking quarantine;" would be subject to a fine; and asked if she had talked to Dr. Fowler. (*Ibid.*) Respondent Tyson said that she had talked to Dr. Fowler, the bystanders should keep their horses under quarantine, but that, as a state veterinarian, she could and would quarantine Emmy at her facility. (*Ibid.*) Respondent Tyson drove away from LAEC with Emmy. Park rangers arrived just as respondent Tyson was leaving LAEC, but did not intercede.

38. A. During the hearing, respondent testified that the group who confronted her in the parking lot (different from the group who she said confronted her in Barn C) was also an angry mob of people, who shouted expletives and tried to block her truck. Respondent Tyson's testimony is not credited, mainly because the videos described above do not demonstrate any such activity. (Ex. 121.)

B. For example, the videos show, at most, five people in the area, who generally kept their distance from respondent Tyson. (Ex. 121.)

C. On the other hand, respondent Tyson was aggressive and vocal with bystanders. She can be seen leaning toward one woman, telling her in a loud and confrontational way, "so don't give me any of your craziness!" (*Ibid.*)

D. Respondent Tyson also clearly can be heard telling bystanders, "are you kidding me?"; "don't tell me about your quarantine"; "according to state law, as a state veterinarian, I can quarantine my horse"; and "so don't get in my face and tell me what's going to happen to this horse." (*Ibid.*)

39. A. Respondent Tyson also contends she was unaware of the quarantine order on Barn C when she arrived at LAEC, which would explain, in part, why she did not knowingly violate the order. She points out that the actual quarantine order was received and signed for by the General Manager of LAEC, Mr. Chatigny, and there was no proof she or her sister Maureen Tyson received it.

B. However, respondent Tyson did not need to be personally served in order to violate the quarantine order. As explained above, under California Code of Regulations, title 3, sections 1301, subdivision (o), and 1301.1, the CDFA could personally serve the quarantine order for Barns B and C on the person with immediate control over those barns, which in this case was Mr. Chatigny. Thus, the Barn C quarantine order was valid, and under Food and Agricultural Code sections 9691 and 9695, it was unlawful for anyone, including respondent Tyson, to remove Emmy from quarantine.

C. In any event, and as discussed above, it is clear that by the time respondent Tyson arrived at LAEC on November 22, 2016, she was well aware of

quarantine orders issued for LAEC and Barn C. There were also various signs and notices on the premises concerning the quarantine that she had to pass to reach and enter Barn C. In addition, Drs. Olmstead and Fowler, as well as the bystanders in the parking lot, told respondent Tyson of the quarantine.

Respondent Tyson Hides Emmy

40. On November 23, 2016, the day after respondent Tyson removed Emmy from quarantine at LAEC, Dr. Beate Crossley of the California Animal Health and Food Safety Laboratory in Davis, California, received the nasal swab Dr. Peralez collected from Emmy the previous day. The nasal swab was tested, and confirmed that Emmy was positive for EHV-1. Dr. Crossley informed Dr. Fowler of Emmy's positive test result. (Ex. 132, pp. 1-2.)

41. On November 23, 2016, Dr. Fowler texted respondent Tyson that Emmy had tested positive for EHV-1, was a confirmed case of EHM, and demanded that respondent Tyson inform the CDFA where Emmy was located so that the CDFA could issue a quarantine order for that location. (Ex. 124, pp. 1-2.) Respondent Tyson did not respond to Dr. Fowler's demand. (Ex. 124, pp. 2-4.)

42. As a result of respondent Tyson removing Emmy from LAEC and not disclosing the horse's whereabouts, on November 23, 2016, the CDFA issued and served on respondent Tyson a quarantine order covering respondent Tyson's residence and the Crown City clinic. Respondent Tyson's attorney at that time, Carl Douglas, made a timely written request for an informal hearing to contest that quarantine order pursuant to California Code of Regulations, title 3, section 1301.3, subdivision (a). CDFA failed to timely provide respondents a hearing on their appeal.

The quarantine order against respondent Tyson's residence and clinic was therefore rescinded.

43. On November 24, 2016, respondent Tyson left a voicemail for Dr. Olmstead, in which she stated that she had euthanized Emmy. (RT, Vol. IV, 52:3-9.) Dr. Flynn then spoke to respondent Tyson. During that conversation, Dr. Flynn expressed condolences and requested that respondent Tyson tell her where Emmy's remains were located. Respondent Tyson told Dr. Flynn that she did not have "the horse named Emmy," that Emmy was not located in Pasadena, and that the CDFA needed to find Emmy and Emmy's owner to protect the Pasadena horse community. (RT, Vol. IV, 34:2-3, 37:4-10, 38:12-22; ex. 128, pp. 1-2.) The latter part of this response was disingenuous, because, as discussed above, respondent Tyson at all times exerted control and possession of Emmy.

44. Later on November 24, 2016, Dr. Fowler requested that respondent Tyson provide proof of euthanasia. (Ex. 124, pp. 4-5.) Respondent Tyson failed to do so and instructed Dr. Fowler to direct all future requests to her attorney, Mr. Douglas. (Ex. 124, pp. 5-6.)

45. On November 27, 2016, Kathleen Baker sent respondent Tyson the text, "Shame on you for breaking quarantine and endangering other horses. What kind of professional are you?" (Ex. 135, p. 1.) Ms. Baker was a third party who had learned about Emmy being removed from quarantine on Facebook. Respondent Tyson texted Ms. Baker (not to be confused with Emmy's trainer Renee Baker) back, writing, among other things, "The horse remains disease free." (RT, Vol. II, 188:1-4, 188:25-189:6, 190:6-13, 191:13-16, 191:23-192:1; ex. 135, pp. 1-2.) During the hearing, respondent Tyson did not deny or otherwise refute that she had informed Ms. Baker that Emmy was alive as of November 27, 2016.

46. A. On or about November 28, 2016, respondent Tyson had a telephone conversation with Kathleen Hobstetter, a journalist covering the horse community, who had learned about Emmy being removed from quarantine. Respondent Tyson told Ms. Hobstetter that Emmy was her horse, that Emmy was alive, that Emmy was no longer at her clinic, and that she had taken Emmy somewhere safe. (RT, Vol. II, 165:12-17, 168:17-22, 170:18-171:18, 175:23-176:7.)

B. On or about November 29, 2016, respondent Tyson and Ms. Hobstetter spoke again. During that conversation, respondent Tyson again confirmed that Emmy was alive. (RT, Vol. II, 174:4-910.)

C. Respondents' medical chart for Emmy documents one of these telephone conversations with Ms. Hobstetter, in which respondent Tyson characterized Ms. Hobstetter as being aggressive and accusatory. (Ex. 220, p. 9.) However, there is nothing in the note that contradicts any part of Ms. Hobstetter's testimony. In any event, respondent Tyson's testimony did not deny or refute that she told Ms. Hobstetter that Emmy was still alive during both conversations.

47. Between November 22, 2016, and December 8, 2016, neither respondent Tyson nor her attorneys disclosed Emmy's location to the CDFA.

The CDFA's Civil Action Against Respondent Tyson

48. Because of respondent Tyson's failure to disclose Emmy's location after removing her from quarantine at LAEC, on December 8, 2016, the CDFA obtained a preliminary injunction against respondent Tyson (Civil Action) from the Superior Court of the State of California, Los Angeles County (Superior Court), requiring that respondent Tyson disclose Emmy's location. (Ex. 140, pp. 1-3.)

49. A. Respondent Tyson's attorney, Mr. Douglas, filed in the Civil Action two declarations that respondent Tyson signed under penalty of perjury, one filed on December 11, 2016, the second on December 14, 2016. (Exs. 141 & 148.)

B. In her December 11, 2016 declaration, respondent Tyson averred that, on November 22, 2016, she instructed her staff to contact Christopher Slauson, the man who sold her Emmy, and that Mr. Slauson sent his agent, Armando Perez, to the Crown City clinic to pick up Emmy. (Ex. 141, p. 2.) In both declarations, respondent Tyson also averred that she returned to the clinic and euthanized Emmy per Mr. Perez's request on the morning of November 23, 2016. Attached as exhibits were copies of alleged records showing transfer of ownership to Mr. Perez, request for euthanasia by Mr. Perez, and a controlled substances log for the euthanasia. (Ex. 141, pp. 2, 3, 11, 13; ex. 148, pp. 1, 2, 4, 5, 7.)

C. In the December 11, 2016 declaration, respondent Tyson declared that Heritage Disposal picked up Emmy's remains from the Crown City clinic at 4:00 a.m. on November 23, 2016; an alleged receipt for that pickup was attached to the declaration. (Ex. 141, pp. 3, 15.) Respondent Tyson also declared that Emmy's remains were picked up from Heritage Disposal by Stiles Animal Removal on November 25, 2016, and that the receipt attached as exhibit 6 was a true and accurate copy of the receipt for that pickup. (Ex. 141, pp. 3, 17.) Finally, respondent Tyson declared that she had no other information regarding the location of Emmy or her remains. (Ex. 141, p. 3.)

50. As described in more detail below, the CDFA filed declarations from Mr. Slauson, Mr. Stiles, and Francis Gonzalez (an employee of Stiles Animal Removal), indicating that statements in respondent Tyson's declarations were false.

Based on that information, on December 21, 2016, the Superior Court issued an Inspection Warrant pursuant to Code of Civil Procedure section 1822.50, authorizing the CDFA to enter both respondent Crown City's clinic and respondent Tyson's residence (which included the Foundation's animal sanctuary) to search for Emmy. (Ex. 156, pp. 1-2.)

51. On December 23, 2016, the CDFA attempted to find Emmy at respondent Tyson's residence and the Foundation's animal sanctuary. (RT, Vol. I, 143:10-15.) After respondent Tyson and her new attorney (her counsel in this matter, Mr. Newman) arrived, respondent Tyson, through Mr. Newman, suggested the address of the Foundation's animal sanctuary was different than that on the warrant and refused to allow the CDFA to inspect it. (RT, Vol. I, 144:6-20.) No one from the CDFA entered her property at that time. (RT, Vol. I, 144:25-145:1; RT, Vol II, 19:4-7.) The CDFA did not find Emmy at the Crown City clinic. (RT, Vol. I, 144:21-24.)

52. On December 30, 2016, respondent Tyson, through her attorney Mr. Newman, allowed the CDFA to come back to the address on the Inspection Warrant to search the Foundation's animal sanctuary. (RT, Vol. II, 83:14-18; ex. 159, p. 1.) Emmy was not at the sanctuary on that date, but an empty stall at the sanctuary had evidence of recent occupancy by a horse. (RT, Vol. II, 83:14-84:1; ex. 159, pp. 1-2.) Respondent Tyson refused to allow Dr. Olmstead to nasal swab the horses in other stalls at the sanctuary or perform neurologic exams for signs of EHM. (RT, Vol. II, 84:14-20, 84:23-85:9; ex. 159, p. 2.)

53. On January 11, 2017, respondent Tyson informed the CDFA that Emmy's carcass would be at the Crown City clinic the next day. (RT, Vol. VII, 177:19-21.)

54. A. On January 12, 2017, CDFA veterinarian Ann Ikelman, Dr. Olmstead, and CDFA employee Esteban Escobedo, traveled to respondent Crown City's clinic. They had understood from prior communications by respondent Tyson and her attorney that the carcass would be released to them. (RT, Vol. II, 90:2-13; RT, Vol. VII, 23:11-18; ex. 162, p. 1.)

B. Respondent Tyson refused to tum over Emmy's carcass, but allowed the CDFA staff members to take blood and tissue samples. (RT, Vol. VII, 35:3-10; ex. 162, p. 2.) As they were taking samples from the various bags containing the carcass, Dr. Olmstead observed that the carcass appeared fresh and that the bags contained shavings that were similar to those she had observed at the Foundation's animal sanctuary. (RT, Vol. II, 94:10-20, 99:10-24, 140:22-143:5; ex. 164, pp. 2-3.)

C. Respondent Tyson also refused to allow Drs. Ikelman and Olmstead to leave with the samples they collected, insisting instead that Stiles Animal Removal pick up the samples and transport them. (RT, Vol. VII, 37:5-10; ex. 162, p. 2.) The samples were then delivered to the California Animal Health and Food Safety Laboratory in Ontario, California. (RT, Vol. VII, 40:20-23; ex. 162, p. 4.)

D. A DNA test on the samples later confirmed that the horse carcass was Emmy. (RT, Vol. I, 153:6-10; RT, Vol. IV, 74:14-18.)

55. At the CDFA's request, Dr. Francisco Carvallo-Chaigneau of the California Animal Health and Food Safety Laboratory in San Bernardino performed a necropsy on the tissue samples. (RT, Vol. V, 19:25-20:2; exs. 167 & 168.) As Dr. Carvallo-Chaigneau testified at the hearing, and as reflected in his necropsy report, the tissue samples did not show the signs a pathologist would normally observe in the carcass of a horse that had been euthanized many weeks before or had been frozen or refrigerated. (RT, Vol. V, 24:5-16, 25:10-12, 35:23-36:4, 54:22-24; exs. 167 & 168.) Accordingly, he concluded that the samples were fresh; it was likely Emmy had only recently been euthanized; and it was highly unlikely that Emmy had been frozen or refrigerated for an extended period of time. (RT, Vol. V, 41:10-42:14.) [2]

Respondent Tyson Perjured Herself in the Civil Action

56. Respondent Tyson declared in the Civil Action that Mr. Slauson, and his purported agent Armando Perez, had requested her to euthanize Emmy on November 22, 2016. As explained in his declaration filed in the Civil Action and his testimony at the hearing, Mr. Slauson never spoke with respondent Tyson on or after November 22, 2016; Mr. Slauson did not send anyone to pick up a horse from respondent Tyson on November 22, 2016; Mr. Slauson did not instruct anyone to

[2] While he could not pin-point a time of death for Emmy, Dr. Carvallo-Chaigneau testified that tissue samples, even if refrigerated continuously post-mortem, still show signs of decomposition within five or six days after death; Emmy's tissue samples showed no such signs.

euthanize Emmy; and Mr. Slauson does not know anyone named Armando Perez. (RT, Vol. I, 175:11-25; ex. 152, p. 2.)

57. A. Similarly, respondent Tyson had declared in the Civil Action that Stiles Animal Removal picked up Emmy's remains from Heritage Disposal early on the morning of November 23, 2016, and she attached documentation of that alleged pickup. However, it was established that there was no such pickup by Stiles Animal Removal on November 23, 2016. (RT, Vol. IV, 94:15-23; ex. 154, p. 3.)

B. Instead, Stephen Stiles, the Vice President of Stiles Animal Removal, persuasively testified that on December 7, 2016, he received a series of calls from a telephone number identified as belonging to "Crown City Med. Group." (RT, Vol. IV, 85:22-25; ex. 154, pp. 2, 5.) The caller identified herself as "Dr. Melissa Tyson." (RT, Vol. IV, 86:1-4; ex. 154, p. 2.) During those phone calls, respondent Tyson asked Mr. Stiles if he would (a) provide her with a receipt even if he did not pick up a dead horse from her, (b) provide her with a blank receipt, and (c) tell any attorney that calls that he picked up a dead horse even if he did not. (RT, Vol. IV, 87:3-9, 87:20-88:2; ex. 154, p. 2.) Mr. Stiles told respondent Tyson that he would not provide her with a false or blank receipt, and he would not lie to any lawyer that called him. (RT, Vol. I, 87:10-15, 88:3-5; ex. 154, p. 2.) Respondent Tyson then told Mr. Stiles she had bags of animal parts that needed to be picked up. (RT, Vol. IV, 88:15-20; ex. 154, p. 2.) After Mr. Stiles asked her why she had bags of animal parts, respondent Tyson did not respond and the conversation ended. (RT, Vol. IV, 88:19-89:3; ex. 154, p. 2.) At this point, Mr. Stiles "suspected something illegal was going on." (Ex. 154, p. 2.)

58. A. Respondent Tyson had also declared in the Civil Action that Heritage Disposal had picked up Emmy's remains from the Crown City clinic early on the morning of November 23, 2016.

B. In reality, respondent Tyson had not contacted Heritage Disposal about such a transaction until December 7, 2016, two weeks later. On that date, respondent Tyson called Michael Arutunian, a family friend and Operations Manager and Vice President of Heritage Disposal, and told him she wanted paperwork indicating that his company had previously disposed of a dead horse. (RT, Vol. IV, 124:9-12; ex. 171, p. 1.) When Mr. Arutunian told her that his company did not do that type of work and could not provide that paperwork, she suggested he call Stiles Animal Removal. (RT, Vol. IV, 124:1-7; ex. 171, p. 2.) He did. (RT, Vol. IV, 125:8-11; ex. 171, p. 2.) During that conversation, Mr. Arutunian asked Mr. Stiles to pick up bags of animal parts. (RT, Vol. IV, 90:1-7; ex. 154, p. 2, ex. 171, p. 2.) Mr. Stiles agreed that his company would come to Heritage Disposal to pick up those bags of animal parts.

C. On December 7, 2016, Heritage Disposal, Mr. Arutunian's company, picked up bags of animal parts from respondent Crown City's clinic, in order to give them to Stiles Animal Removal. (RT, Vol. IV, 126:17-127:8.) Respondent Tyson or her employee, Herbert Ramirez, instructed Mr. Arutunian to obtain a blank copy of a Stiles Animal Removal receipt that they could falsify to reflect the pickup of a horse on November 25, 2016. (RT, Vol. IV, 128:12-129:25, 130:6-15; ex. 171, pp. 2-3.)

59. On the morning of December 8, 2016, Francis Gonzalez, a driver for Stiles Animal Removal, picked up bags of animal parts from Heritage Disposal's Alhambra location. (RT, Vol. IV, 91:15-92:16, 127:15-21.) The bags of animal parts were provided by respondent Tyson, but did not contain Emmy's remains. (RT, Vol. IV, 126:17-127:8; RT, Vol. VII, 20:22-21:7.) At the end of the transaction, at Mr. Arutunian's request, Mr. Gonzalez gave Mr. Arutunian both copies of a receipt (Dead Slip) that was blank except for the pickup location of 704 S. Date Avenue, Alhambra, CA. (RT, Vol. IV, 131:8-16.)

60. At respondent Tyson's or Mr. Ramirez's direction, Mr. Arutunian then filled out a receipt falsely indicating that Heritage Disposal had picked up a dead horse named Emmy at respondent Tyson's clinic on November 23, 2016, and filled out the Dead Slip falsely indicating that Stiles Animal Removal had picked up Emmy at Heritage Disposal on November 25, 2016. (RT, Vol. IV, 131:9-16, 135:10-12, 137:25-138:5; ex. 147, p. 15, ex. 147, p. 17, ex. 171, p. 2, ex. 171, p. 3.) Mr. Arutunian then met with respondent Tyson and gave her the receipt from Heritage Disposal and Dead Slip from Stiles Animal Removal, and those documents were included as exhibits 5 and 6 to the declaration of respondent Tyson filed in the Civil Action on December 11, 2016. (RT, Vol. IV, 138:20-139:4; ex. 147, p. 15, ex. 147, p. 17, ex. 171, p. 2.)

61. Mr. Arutunian was subsequently contacted by an investigator from CDFA. He hired an attorney and began cooperating with CDFA's investigation of this matter. In a declaration he signed on April 24, 2017, and in his testimony at the hearing, Mr. Arutunian admitted the work order and receipt from Heritage Disposal he created were false and back-dated at the request of respondent Tyson.

62. Respondent Tyson admitted during the hearing that her declarations contained falsehoods, and she did not deny that she requested others to help her falsify records.

The Virus Outbreak at LAEC Ends

63. The initial quarantine was placed at LAEC on November 3, 2016. Dr. Crossley testified it was one of the larger outbreaks she had seen. A total of 330 exposed horses were under quarantine at the peak of the outbreak. A total of 15 horses were confirmed positive for EHV-1 and eight horses were diagnosed with EHM; the other seven horses were febrile but had no signs of neurologic disease.

Only one of the horses diagnosed with EHM was euthanized due to the severity of clinical signs. (Vol. I, 94:24-95:4; ex. 111, p. 81.) After respondent removed Emmy from LAEC, three horses tested positive for EHV-1; two of these horses were stalled in Barn C. (Ex. 111, pp. 56, 63, 65.)

64. Emmy was never diagnosed with EHM: Although Emmy tested positive for EHV-1 by the nasal swab, her blood sample tested negative. (Ex. 132.) Dr. Crossley persuasively testified that this was not unusual. The nasal swab test is more sensitive since it can detect the virus for a period of up to 10 days, but a blood test will only show signs of the virus when the host is still viremic (characterized by the presence of a virus in the blood), which is a very short period. The tissue samples received by Dr. Carvallo-Chaigneau on January 12, 2017, were negative for any sign of EHV-1, meaning Emmy had recovered from the virus by the time she had been euthanized. (Ex. 167.) Respondents' expert pathologist, Dr. David W. Gardiner, similarly testified that the tissue samples of Emmy he received and tested when he conducted his own necropsy in January 2017 were disease-free.

65. A. Respondent Tyson never provided a coherent explanation for euthanizing Emmy and the exact date of her death was not established.

B. Her initial contention was false that Emmy had been euthanized on November 23, 2016, as explained above. Moreover, as discussed above, respondent Tyson told Ms. Baker and Ms. Hobstetter, after November 23, 2016, that Emmy was still alive. Finally, Dr. Carvallo-Chaigneau persuasively opined that Emmy had only recently been euthanized when he performed the necropsy on January 12, 2017, suggesting Emmy's death was only five or six days before.

C. Respondent Tyson testified she euthanized Emmy because, when she called her sister Maureen for advice after leaving LAEC with Emmy on November 22, 2016, her sister told her to "just get rid of the horse." While Maureen Tyson corroborated that conversation in her testimony during the hearing, she testified she meant for her sister to either sell Emmy or euthanize her. However, it is unclear why respondent Tyson decided to have Emmy euthanized before trying to sell her. If respondent believed Emmy never had the EVH-1 virus or EHM, it is also perplexing why she decided to euthanize Emmy instead of simply releasing Emmy to the Foundation animal sanctuary, where retired service dogs and unwanted horses and other animals are kept.

D. Based on these circumstances, it was established that respondent Tyson ultimately decided to euthanize Emmy, on a date not established but a significant period after November 23, 2016, and relatively close to January 12, 2017, in order to cover up the false statements in her declarations filed in the Civil Action that Emmy had been euthanized on November 23, 2016.

66. A. As established by the declarations and testimony of Drs. Fowler, Olmstead and Flynn, as well as the testimony of the Board's expert witness Dr. Lisa Franz-Weiss, respondent Tyson's removing Emmy from quarantine, exposing her to other horses, and hiding her location from the CDFA, put at risk the horse population in California. Emmy could have infected any horse she came in contact with, who then could have spread the disease to other horses.

B. Respondent Tyson's behavior also increased the chances that other owners and trainers would violate quarantine orders at LAEC and elsewhere. While CDFA and LAEC staff tried to keep respondent Tyson's quarantine violation from public knowledge, the fact that third parties such as Kathleen Baker and Kathleen

Hobstetter found out about it indicates that some members of the public learned of the violation.

C. As described by Dr. Flynn in her testimony, after respondent Tyson removed Emmy from quarantine, some of the LAEC owners and trainers had become concerned about the situation and questioned whether they also had to keep their horses under quarantine. Dr. Flynn had to reassure those individuals at a number of meetings that CDFA had the situation under control, which made enforcement efforts at LAEC more difficult. (RT, Vol. IV, 44:3-11, 46:8-17, 47:4-6.)

Respondents' Defenses

LACK OF KNOWLEDGE OF THE BARN C QUARANTINE

67. A. In addition to respondents' contentions described above, they offered several other defenses for their actions.

B. For example, respondent Tyson testified she did not know about the quarantine order for Barn C, and argues her lack of knowledge is evidenced by the fact she immediately appealed the quarantine order placed on her residence and clinic. Respondents argue it is reasonable to infer that, had respondent Tyson known of the quarantine order for Barn C, she would have similarly requested a hearing to contest it, as she did with the November 23, 2016 quarantine order.

C. Respondents' argument is unconvincing for several reasons. First, as discussed above, respondent Tyson was probably aware of the quarantine order covering Barn C where Emmy was stabled by the time she arrived at LAEC on November 22, 2016, and certainly aware of it by the time she removed Emmy. Second, respondent Tyson had no remedy regarding the quarantine order covering her

residence or clinic other than appealing it; as to the quarantine covering Barn C, it is clear that she decided it was easier to remove Emmy from LAEC than leave her there and resort to an appeal. Third, respondent Tyson may have realized, on November 23, 2016, that the CDFA was serious about enforcing its quarantines, which she may not have thought was the case the day before when she removed Emmy from LAEC. Finally, respondent Tyson's testimony on this point is self-serving and uncorroborated; in light of her acts of perjury discussed above, her credibility here is suspect.

RESPONDENT TYSON WAS NOT TOLD ABOUT A MOVEMENT PERMIT

68. A. Respondents point to the fact that a horse theoretically could be removed from a quarantine for medical care under proper circumstances. (RT, Vol. II, 118:23-25.) All that would be required was a "movement permit." (RT, Vol. II, 120:1-2.) To obtain such a permit, one only had to contact Dr. Olmstead. (RT, Vol. II, 118:19-22.) Respondents complain that Dr. Olmstead was present and met with respondent Tyson on November 22, 2016, but that Dr. Olmstead failed to advise respondent Tyson about a movement permit.

B. This argument is also unconvincing. Respondent Tyson's status as an APHIS veterinarian makes it hard to believe she did not know about being able to request a movement permit for a medical situation. Next, as demonstrated by her statements to Renee Baker, Caryn McDaris, and Dr. Fowler, it is clear that respondent Tyson fully intended to remove Emmy regardless of the circumstances. It strains credulity to believe she would have stopped and asked Dr. Olmstead to fill out a movement permit. In any event, it was very unlikely that Dr. Olmstead would have given such a permit to respondent Tyson, given that Emmy was exhibiting symptoms of EHM, respondent Tyson was not cooperating, and the CDFA had a practice only to issue movement permits for horses that are safe to travel to an approved location and

will be quarantined at that location. Respondent Tyson demonstrated nothing indicating she would disclose Emmy's location once removed or otherwise cooperate with CDFA efforts to monitor her situation.

EMMY NEVER HAD A DISEASE

69. A. Respondents have always maintained that Emmy was not suffering from a disease on or after November 22, 2016. In support, respondents refer to the fact that after she had removed Emmy from LAEC, respondent Tyson sent a text to State Veterinarian Dr. Jones stating that she did not believe Emmy had been exposed to the virus because no horse within 30 feet of her had a positive nasal swab for more than three weeks. (Ex. 208, p. 4.) Respondent Tyson also testified Emmy did not exhibit any signs of a virus when she saw her at Emmy's stable. Respondent Tyson also points to the fact that Dr. Crossley testified a nasal swab sample of Emmy taken by respondent Tyson on November 23, 2016, tested negative for EHV-1. Respondent Tyson also testified that she believed the negative blood test result indicated Emmy did not have EHV-1. Respondent Tyson also pointed to her prior concerns about equine husbandry and maintenance of the LAEC stables, which she previously expressed in her October 2016 complaint letter to LAEC.

B. First, whether or not respondent Tyson believed Emmy was infected with EHV-1 at the time she removed Emmy from quarantine is irrelevant to whether respondent Tyson violated the quarantine order. As established by the testimony of Drs. Fowler, Olmstead, Flynn, and Franz-Weiss, an apparently healthy horse that has been exposed to EHV-1 could develop and spread that disease. Regardless, there are no exceptions from a quarantine order under the Food and Agricultural Code simply because a licensed veterinarian believes an animal under quarantine is nonetheless disease-free.

C. Second, the evidence respondents rely upon fails to call into question Dr. Peralez's diagnosis of EHM or the positive EHV-1 test result on Emmy's nasal swab. As discussed above, Dr. Crossley testified that testing nasal swabs for EHV-1 is more reliable than testing blood because it has a longer window in which positive results may be observed. (RT, Vol. III, 178:4-179:8.) Similarly, none of the results of other tests discussed by Dr. Tyson are reliable. They do not indicate whether Emmy had EHV-1 at the time she was removed because those results related to the body's immune response to EHV-1 and not the presence of the virus itself; they post-dated Emmy's removal from quarantine by a substantial period of time; and were obtained from tests performed by unaccredited laboratories on samples that were collected and stored in less than desirable media (like gel). (See, e.g., RT, Vol. V, 58:3-9; RT, Vol. VI, 27:4-24; ex. 220, pp. 10-11.) In addition, a total of 15 horses at LAEC were confirmed positive for EHV-1, including three in Barn C, and respondent Tyson never provided a theory regarding what was causing the horses at LAEC to become ill. (Vol. I, 94:24-95:4; ex. 111, pp. 29, 63, 65, 81.)

D. As discussed above, respondent Tyson failed to corroborate the validity of her expressed concerns regarding the care Emmy was receiving at, or the general condition of, LAEC. Respondent Tyson also undercut her purported concern about Emmy when she testified that she had no qualms over euthanizing Emmy simply because she had nowhere to stable her. (RT, Vol. VIII, 41:7-12.)

DR. PERALEZ IS ACCUSED OF A FALSE DIAGNOSIS

70. A. Respondents also contend Dr. Peralez erroneously reported that Emmy had a fever when he examined her on November 22, 2016. Respondents contend Dr. Peralez must have submitted a contaminated nasal swab, because the blood he submitted from Emmy tested negative for EHV-1. Respondents also point

out that Dr. Peralez would have been going between barns and isolation, and therefore surmise that he somehow carried the virus with him and infected the nasal swab.

B. Respondents also contend Dr. Peralez erroneously claimed Emmy had neurologic movement problems, because they claim that videos showed otherwise as Dr. Tyson loaded Emmy into the trailer.

C. At the time of these events, Dr. Peralez had two or three clients at the Flintridge Riding Club, which respondent Tyson had sued. (RT, Vol. III, 143:5-7.) Dr. Peralez learned of the events that took place at the Flintridge Riding Club involving respondent Tyson sometime in 2017. (RT, Vol. III, 143:18-24.) From these facts, respondents suggest Dr. Peralez may have been motivated to falsely claim Emmy was symptomatic of EHV-1 so he could place her in isolation.

D. This defense involving Dr. Peralez is sheer conjecture and completely lacking in merit. The only two videos in evidence (ex. 121) start when Emmy was already in respondent Tyson's trailer. Dr. Peralez was not the only witness who diagnosed Emmy as having symptoms compatible with EHM; Dr. Olmstead reached the same conclusion. As an equine specialist with a great deal of experience examining horses in a quarantine setting, Dr. Peralez testified that he followed biosecurity measures to prevent the spread of the virus, or the contamination of the nasal swab. (RT, Vol. II, 58:23-59:10, 143:18-144:6; RT, Vol. III, 108:11-14, 113:4-22, 115:10-15, 117:13-25.) Moreover, it is not clear how his knowledge of the events concerning the Flintridge Riding Club lawsuit would create any animus toward respondents when he only learned about those events well after the events that occurred at LAEC.

THE RESCINDED NOVEMBER 23, 2016 QUARANTINE

71. A. Respondents argue there was no valid quarantine that was violated because the CDFA rescinded the November 23, 2016 quarantine order placed on respondent Tyson's residence and clinic. Respondents also point out that the Civil Action was ultimately dismissed by CDFA without any further action, other than as described above, on April 28, 2017, after Mr. Newman filed a Demurrer in that case.

B. The fact that the November 23, 2016 quarantine order was rescinded had no impact on the earlier quarantine placed on Barn C, which was still in effect when respondent Tyson removed Emmy.

C. The fact that the Civil Action was dismissed without prejudice by the CDFA has no collateral estoppel or other legal impact on this proceeding, as was explained previously in the ALJ's Order dated October 15, 2018, denying respondents' Demurrer and Request for Dismissal filed in this case. There were no issues necessarily decided in the prior matter, and no final judgment on the merits. Without such, issue preclusion does not apply. (*Ronald F. v. State Dept. of Developmental Services* (2017) 8 Cal.App.5th 84; *Shor v. Department of Social Services* (1990) 223 Cal.App.3d 70.)

LACK OF KNOWLEDGE THAT THE CDFA WAS LOOKING FOR EMMY

72. A. Respondent Tyson testified that she did not know the CDFA was looking for Emmy after she removed Emmy from LAEC. Respondent Tyson's testimony is fanciful in light of the overwhelming contrary evidence.

B. For example, in the days after she removed Emmy from quarantine, respondent Tyson had multiple conversations and text exchanges with

CDFA staff, who each time requested that she disclose Emmy's location and submit proof of euthanasia. On November 23, 2016, respondent Tyson was served with a quarantine order for her residence and clinic, which her attorney appealed. After respondent Tyson told the CDFA to contact her attorney instead of her, the CDFA directed requests to her attorneys for Emmy's location. The CDFA thereafter obtained a preliminary injunction order requiring respondent Tyson to disclose Emmy's location and then an Inspection Warrant to search her residence and clinic. Respondent Tyson signed two declarations in the Civil Action. Even assuming arguendo that she did not read her own declarations before signing them, respondent Tyson must have known the CDFA was looking for Emmy after she was served with process in the Civil Action and therefore had to hire legal counsel.

C. The fact that respondent Tyson concocted a scheme to lie about Emmy being euthanized on November 23, 2016, and enlisted Mr. Arutunian to help her, also corroborates her knowledge that the CDFA was still looking for Emmy. Finally, respondent Tyson was present when the CDFA tried to execute the Inspection Warrant at her residence on December 23, 2016, and again when she allowed the Department to inspect the Foundation's animal sanctuary on December 30, 2016.

MR. DOUGLAS IS BLAMED FOR THE FALSE DECLARATIONS

73. A. Respondent Tyson conceded in her testimony that there were many false statements in her declarations filed in the Civil Action. However, she denies having committed perjury; she testified instead that Mr. Douglas was responsible for writing them, which she signed without reading. Respondents therefore argue that it was Mr. Douglas who made the false statements to the court in the Civil Action, not respondent Tyson. Respondents conclude that because CDFA

elected not to pursue any contempt proceedings in the Civil Action, which they argue was the proper venue to contest the truth of the declarations, respondent Tyson has never had an opportunity to defend against any such claims.

B. It became clear from the evidence and respondent Tyson's testimony that she is an intelligent, well-educated woman, who would not allow herself to be bullied or forced to do something she did not want to do; and that she would not sign an important legal document without reading it. She testified she did not know what perjury is, did not know it was a crime to lie under oath, and did not know that it was wrong to lie under oath. (RT, Vol. VIII, 120:13-15, 121:7-15, 121:19-23.) This testimony is not credible and greatly undermined her credibility in this case.

C. Moreover, it is not clear how her prior attorney would have obtained the detailed information contained in the declarations unless it was provided to him by respondent Tyson, including the names of those involved (Messrs. Stiles, Arutunian, and Slauson) and the documents attached to them. As explained in great detail above, the evidence clearly demonstrated that it was respondent Tyson who contacted Mr. Stiles and Mr. Arutunian to solicit them to help her generate false documents. Respondent Tyson had an opportunity in this case to defend herself against claims that she committed perjury, but she chose not to, other than her claim against Mr. Douglas.

Expert Opinions on Professionalism

74. Complainant presented the expert witness testimony of Lisa Franz-Weiss, a licensed veterinarian with over 30 years' experience in California who, for the past several years, has also served as a medical consultant and hospital inspector for

the Board. Dr. Franz-Weiss reviewed summaries of interviews with various witnesses, statements, and other documents concerning the events in question. She wrote a detailed report describing the information she reviewed and her understanding of the events. (Ex. 15.) In her report, and during her testimony at hearing, Dr. Franz-Weiss offered several opinions about respondent Tyson's conduct as compared with veterinary professional standards in this state. Her opinions were persuasive, well-supported, and virtually unopposed by respondents, who offered no competing expert opinion evidence other than respondent Tyson's testimony.

75. Specifically, it was established by Dr. Franz-Weiss's persuasive report and testimony that respondent Tyson acted unprofessionally by violating the mandatory quarantine in place on Barn C at LAEC on November 22, 2016. She removed Emmy, after the horse had exhibited clinical signs of a contagious disease and had been designated for isolation, without consent from the State Veterinarian. By doing so, respondent Tyson violated state law, without good reason or justification, and presented a significant risk of spreading the virus to other horses on and off the premises. (Ex. 15, p. 298-299.)

76. It was also established by Dr. Franz-Weiss's persuasive report and testimony that respondent Tyson acted unprofessionally when she failed to comply with enhanced biosecurity measures in place at LAEC on November 22, 2016. By doing so, respondent Tyson presented a significant risk of spreading the virus to other horses on and off the premises. (Ex. 15, pp. 298-299.)

77. For the same reason, it was established by Dr. Franz-Weiss's persuasive report and testimony that respondent Tyson acted unprofessionally by causing more than a 30-day delay in the containment of the spread of the EHV-1 virus and the potential spread of the virus to other horses, by using deception to hide Emmy's whereabouts, and by refusing to disclose Emmy's location to the CDFA.

Evidence of Mitigation, Aggravation and Rehabilitation

78. Respondent Tyson had six or seven other horses stabled at LAEC, but Emmy was the only horse she removed. She argues this shows she is not likely to commit similar misconduct in the future. This evidence has little probative value because there is no evidence suggesting any of the other horses were suspected of having a disease. If there had been such a suspicion about any of her other horses, the evidence indicates that respondent Tyson would have removed them.

79. Respondent Tyson testified that at all times Emmy was kept isolated from her other animals. For example, she drove Emmy alone in an enclosed trailer to her clinic, where she kept Emmy in isolation. However, respondent Tyson presented no corroboration. The fact she has consistently stated Emmy was not sick, and that she took affirmative steps to keep Emmy's location hidden from the CDFA, calls into question whether Emmy in fact was kept in isolation.

80. A. Respondent Tyson began seeing clinical psychologist Barbara Janetzke in January 2017. Respondent Tyson reported to Dr. Janetzke feelings of stress and depression stemming from the events at the Flintridge Riding Club in September 2015 and from LAEC in November 2016. Dr. Janetzke saw respondent

Tyson periodically through May 2019. Dr. Janetzke ultimately diagnosed respondent Tyson with post-traumatic stress disorder (PTSD).

B. Dr. Janetzke testified that, because of the events respondent Tyson experienced at the Flintridge Riding Club, she was hyper-aroused, hyper-vigilant, and extremely distrustful of other people by the time she became embroiled in the events at LAEC. As a result of respondent Tyson's suffering from PTSD on and after November 22, 2016, Dr. Janetzke believes respondent Tyson's cognitive and rational skills were so compromised that she did not intend to deceive CDFA when she refused to disclose Emmy's location. Respondents argue that Dr. Janetzke's observations help explain why respondent Tyson would hide Emmy from the CDFA and thereafter signed declarations her attorney prepared containing false information.

C. While the validity of Dr. Janetzke's diagnosis of respondent Tyson's PTSD is not necessarily called into question, the possible effects of the disorder Dr. Janetzke attributes to respondent Tyson's actions are contradicted by the weight of the evidence and therefore not convincing. For example, Dr. Janetzke's opinion was based solely on information that respondent Tyson and her attorney Mr. Newman provided to her. (RT, Vol. VI, 70:10-13, 74:10-14, 83:22-84:10.) This is important because Dr. Janetzke was not aware that respondent Tyson, with the help of Mr. Arutunian, had executed her intricate plan to deceive the CDFA with false declarations and documents purporting to show Emmy had been euthanized and picked up for rendering on November 23, 2016.

D. Dr. Janetzke's opinion also conflicts with other evidence. For example, instead of avoiding potential conflict, as one would suspect someone suffering from PTSD would do, respondent Tyson returned to LAEC to take nasal swabs of other horses on November 30, 2016. (RT, Vol. VIII, 118:23-119:1.) Moreover,

respondent Tyson testified that she continued to practice as a veterinarian, a stressful job, in the months after she removed Emmy from quarantine, and that during that time she knew the difference between right and wrong. (RT, Vol. VIII, 119:6-11, 121:16-18 [respondent Tyson]; see also RT, Vol. VI, 85:10-15 [Dr. Janetzke].)

E. Dr. Janetzke's records show she only met with respondent Tyson three times in January 2017, three times in 2018, and twice in 2019. (Ex. 227, p. 2.) This sparse treatment regimen is not indicative of a pervasive condition. To the contrary, the progress notes for those visits consistently record that respondent Tyson's "[j]udgment is good." (*Ibid.*) Those notes suggest respondent Tyson's cognitive and rational thinking skills were not impacted as badly as depicted by Dr. Janetzke during the hearing.

F. Interestingly, Dr. Janetzke's January 18, 2017 note indicates respondent Tyson "verbalizes awareness of problems, but blames on [sic] others." (Ex. 227, p. 8.) During the January 31, 2018 session, respondent Tyson told Dr. Janetzke, "She feels she is ready to have her license taken and that she will shift her focus to other projects involving horses. She is more angry about the possibility of having to pay the CA board's legal fees." (*Id.*, p. 10.) These notes show a confluence of the following thoughts: respondent Tyson blames others for the events in question; demonstrates no remorse for her own conduct, but instead is angry that she may be required to reimburse the legal fees and costs incurred as a result of her actions; and she realizes on some level that her actions were serious enough to make revocation of her license a distinct possibility.

81. Respondents presented character reference letters from veterinarian Valerie Talleyrand, who had worked several years for respondents, as well as Sara Shatford Layne and MaryMichael Swenson, both long-time clients who take their pets

to respondents. (Ex. 225.) All three also testified. They described respondent Tyson as an honest, caring and expert practitioner, and they offered their unflinching support of her in this matter. However, the probative value of their opinions concerning respondent Tyson's character is greatly diminished by their imperfect understanding of the details behind respondent Tyson's violation of the LAEC quarantine and their complete lack of knowledge that she perjured herself in the Civil Action. In a sense, these character witnesses crystalize perhaps the most perplexing aspect of this case: how someone as talented and able as respondent Tyson could act so unprofessionally and deceptively with so little to gain by such actions.

82. Other than her treatment with Dr. Janetzke, respondent Tyson offered no evidence of rehabilitation. Dr. Janetzke testified that respondent Tyson's treatment has concluded, her PTSD is now in remission, and she is safe to practice as a veterinarian at this time.

83. In aggravation, her sister Maureen testified that respondent Tyson has never shown remorse for euthanizing Emmy. As discussed above, respondent Tyson offered no remorse or contrition about her conduct when treating with Dr. Janetzke. During the hearing, respondent Tyson did not appear to be remorseful or contrite in the least for her actions. As chronicled above, she still blames others for her misfortunes and it is apparent she has never accepted any responsibility.

84. In aggravation, it became clear from respondent Tyson's testimony on cross-examination that respondent Crown City's staff members had little supervision

or oversight. Rather they had almost unfettered access to controlled substances, and were not required to maintain comprehensive or accurate controlled substances logs.

Costs

85. A. The Board submitted evidence of having incurred the following costs in this matter totaling $30,733.50:

B. Investigative costs totaling $4,071 investigating the complaint in its case number 17-10947-VM. That was a complaint the Board had received about respondent Tyson purportedly falsely impersonating a state officer when she visited LAEC to take nasal swab samples from other horses on November 30, 2016. (Ex. 4.)

C. Investigative costs totaling $5,015 investigating the complaint in its case number 17-10899-VM. That was a complaint the Board had received from CDFA's attorneys who prosecuted the Civil Action against respondent Tyson for violating the quarantine at LAEC. (Ex. 5.)

D. Expert witness costs totaling $1,237.50 associated with Dr. Franz-Weiss's review of materials pertaining to the two complaints described above. (Ex. 15.)

E. Prosecution costs totaling $20,410 representing the attorneys' fees billed to the Board by the Office of the Attorney General (AGO) in this matter.

86. A. The investigative costs related to the CDFA's complaint to the Board concerning respondent Tyson's violation of the quarantine (Board case no. 17-10899-VM), as well as the attorney fees billed by the AGO in this matter, are reasonable.

B. The Board ultimately decided to not file charges against respondent Tyson concerning the complaint that she had impersonated a state officer at LAEC on November 30, 2016, concluding there was insufficient evidence. (Ex. 4, p. 150.) Dr. Franz-Weiss reached the same conclusion. (Ex. 15, p. 297.) Thus, the costs related to that complaint are not reasonable. They do not demonstrate that respondents violated any part of the Veterinary Medicine Practice Act. Since Dr. Franz-Weiss did not provide a break-down of her total review costs, it is concluded that half of her costs were devoted to reviewing the complaint concerning the events of November 30, 2016. Under these circumstances, a reduction of $4,689.75 from the Board's total costs is warranted.

87. Based on the above, the Board incurred reasonable costs in investigating and prosecuting this matter totaling $26,043.75.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in this licensing disciplinary matter is on complainant. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. A. The standard of proof for disciplining a professional license is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance, supra,* 135 Cal.App.3d at pp. 855-856.) Respondent Tyson's license is a professional one warranting this standard, a point of which the parties agree.

B. The parties do not specifically address whether the clear and convincing standard also applies to respondent Crown City, but neither argued the lower preponderance of the evidence standard applies. While the ALJ is not concluding a veterinarian premises permit is a professional license, the clear and convincing standard is nonetheless also applied to respondent Crown City because all of the factual findings herein were established using the higher standard.

C. The clear and convincing standard has been defined as meaning proof that is clear, explicit, and unequivocal; so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Cause for Discipline Against Respondents

3. A. Business and Professions Code section 4883, subdivision (g),[3] allows the Board to revoke, suspend, or assess a fine against a license for unprofessional conduct. As discussed above in Factual Findings 19-23, Food and Agricultural Code sections 9562, 9563, 9564 and 9691 provide the CDFA with legal authority to issue and enforce quarantines over animals suspected of having serious, contagious diseases.

B. Respondents Tyson and Crown City are subject to disciplinary action under section 4883, subdivision (g), in conjunction with Food and Agricultural Code sections 9562, 9563, 9564 and 9691, in that it was clearly and convincingly established that respondent Tyson acted unprofessionally by violating a mandatory quarantine issued by the CDFA for LAEC on November 22, 2016, when she removed

[3] Unspecified statutory references are to the Business and Professions Code.

the horse Emmy from mandated quarantine premises after Emmy had exhibited clinical signs of a contagious disease. Respondent Tyson further engaged in unprofessional conduct when she failed to comply with enhanced biosecurity measures on November 22, 2016, before and after entering Barn C at LAEC to remove Emmy from the premises. (Factual Findings 1-39, 67-73 & 74-77.)

C. Respondents unconvincingly argue section 4883, subdivision (g), only provides discipline for unprofessional conduct when a licensee has been convicted of a drug-related crime (subd. (g)(1)), has used a drug or controlled substance improperly (subd. (g)(2)), or otherwise violated a state or federal rule or law pertaining to dangerous drugs or controlled substances (subd. (g)(3)), because those are the only acts specifically described in subdivision (g). However, section 4883, subdivision (g), also provides that unprofessional conduct "includes, but is not limited to" what is described in subdivision (g)(1) through (g)(3). The phrase "is not limited to" means unlisted conduct may still be "unprofessional conduct" subject to discipline. (*Gillis v. Dental Bd. of California* (2012) 206 Cal.App.4th 311, 320, disapproved of on other grounds by *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109.) This is because it is a general rule of statutory construction that use of the language "including, but not limited to" in the statutory definition is a phrase of enlargement rather than limitation. (*People v. Arias* (2008) 45 Cal.4th 169, 182.)

4. A. In addition to the aforementioned section 4883, subdivision (g), the Board may also discipline a license for "[f]raud or dishonesty in applying, treating, or reporting on tuberculin or other biological tests" (§ 4883, subd (d)); and "[a]iding or abetting in any acts that are in violation of any of the provisions of this chapter" (§ 4883, subd. (j)).

B. It was not established that respondents are subject to disciplinary action under section 4883, subdivisions (d), (g) and (j), in that it was not clearly and convincingly established that on November 22, 2016, respondent Tyson acted unprofessionally by misrepresenting that Emmy did not have a fever and was not displaying signs of illness in connection with her removal of Emmy from Barn C at LAEC. While Drs. Peralez and Olmstead, in their capacity as CDFA designees, had concluded Emmy had such signs of illness and suspected she may have been infected with EHV-1, such matters are subject to professional differences, and it is entirely possible that respondent Tyson believed otherwise. Thus, while the evidence clearly established that Emmy had a fever and had displayed signs of neurological deficits consistent with EHV-1, it was not clearly and convincingly established that respondent knew otherwise and purposely misrepresented Emmy's condition when she removed her from LAEC. (Factual Findings 1-39, 67-73 & 74-77.) As explained above, respondents' misconduct consisted of knowingly violating a quarantine order and thereafter hiding Emmy from the CDFA.

5. A. Respondents Tyson and Crown City are subject to disciplinary action under section 4883, subdivisions (g) and (j), in conjunction with Food and Agricultural Code section 9695 (see Factual Finding 23), in that it was clearly and convincingly established that respondent Tyson acted unprofessionally by failing to disclose the location of Emmy, an infected horse, after the horse was unlawfully removed from LAEC mandatory quarantine on November 22, 2016.

B. More specifically, when the CDFA requested several times that respondent Tyson provide Emmy's location, she failed and refused, even after the CDFA obtained a court-ordered preliminary injunction and then an Inspection Warrant under Code of Civil Procedure section 1822.50. Respondent Tyson's actions caused

more than a 30-day delay in the containment of the EHV-1 virus and the potential exposure of the virus to other horses. (Factual Findings 1-39, 40-55, 67-73 & 74-77.)

C. Respondent Tyson argues she was suffering from PTSD during the events in question and therefore did not understand the CDFA was looking for Emmy after she removed Emmy from LAEC, and that, in any event, it was not proven that she actually knew before January 2017 that the CDFA was still looking for Emmy. But respondents did not prove those two contentions as a matter of fact. (See, e.g., Factual Findings 72 & 80.)

6. A. In addition to the aforementioned section 4883, subdivision (j), the Board may discipline a license for "[v]iolation or attempting to violate, directly or indirectly, any of the provisions of this chapter" (§ 4883, subd. (c)); and for "[f]raud, deception, negligence, or incompetence in the practice of veterinary medicine" (§ 4883, subd. (i)).

B. Respondents are subject to disciplinary action under section 4883, subdivisions (c), (i) and (j), in that it was clearly and convincingly established that respondent Tyson engaged in deception with the CDFA when she failed to disclose the true circumstances relating to the date and time of the euthanasia of Emmy after respondent Tyson had unlawfully removed Emmy from the mandatory quarantine. In fact, respondent Tyson committed acts of perjury in proceedings before the Superior Court by falsely stating that she had euthanized Emmy on November 23, 2016, when, in fact, she had euthanized Emmy significantly later, though the precise date was not established. (Factual Findings 1-39, 40-55, 56-66 & 67-73.)

C. Respondents argue section 4883, subdivision (i), was not violated because respondent Tyson's acts of deception were related to her perjured declarations in court filings, which did not involve "the practice of veterinary medicine" as is required by subdivision (i). However, respondent Tyson's acts of deception were tightly intertwined with her actions as Emmy's veterinarian, i.e., vaccinating and caring for Emmy before the quarantine, evaluating Emmy for signs of EHM before removing her from LAEC, removing Emmy from LAEC purportedly to protect her health, her decision to place Emmy in her own quarantine at another location, and her later decision to euthanize Emmy. The relationship between respondent Tyson's acts of deception and her care for Emmy as a veterinarian show her deception was indeed related to her practice of veterinary medicine.

Disposition

7. A. The purpose of licensing statutes is to protect the public. (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016.)

B. In determining the level of discipline to be imposed in this case, the ALJ considered the Board's *Disciplinary Guidelines* [effect. July 2012] (Guidelines). For the violations established in this case, i.e., section 4883, subdivisions (g), (i), (j), and (c), the Guidelines recommend revocation as the maximum discipline, and a stayed revocation under probation for two years with various terms as the minimum discipline.

C. In this case, revocation is clearly warranted by respondent Tyson's egregious misconduct. She knowingly violated a quarantine designed to protect the health of animals, something a state-licensed and APHIS-accredited veterinarian should know not to do. Respondent Tyson thereafter hid Emmy and purposely

confounded the CDFA's ability to find Emmy and enforce its quarantine. She thereafter committed several acts of perjury in the Superior Court by falsely declaring that Emmy was euthanized on November 23, 2016, which in fact did not occur. Respondent Tyson ultimately euthanized a healthy animal, Emmy, when she did not have to, simply to cover up her prior acts of perjury. Killing a healthy animal should be anathema to a veterinarian. And yet, respondent Tyson has exhibited no remorse for that action.

D. Respondents presented some evidence of mitigation, namely many years of unblemished service as a licensed veterinarian and many happy customers. The Foundation has apparently also done good works for animals. However, the severity of respondent Tyson's conduct and aggravating facts greatly outweigh the mitigation. For example, respondent Tyson has demonstrated no remorse for any of her acts in this case. Inasmuch as all of her denials and defenses were either not established or patently unbelievable, it is apparent that respondent Tyson has never accepted any responsibility for her misconduct. Her actions also made the CDFA's enforcement efforts to contain the EHM outbreak at LAEC much more difficult and expensive. She presented little evidence of rehabilitation, other than limited treatment for PTSD with Dr. Janetzke. Under these circumstances, public protection warrants revocation of her license. (Factual Findings 1-84; Legal Conclusions 1, 2, 3, 5 & 6.)

E. When a licensee operates its licensed business through employees and agents, the licensee must be responsible to the licensing authority for the employees' and agents' conduct in the exercise of the license. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144.) In this case, respondent Crown City is owned and controlled by respondent Tyson, and therefore is responsible for the actions of respondent Tyson. No argument was advanced that respondent Crown City

should be disciplined differently than respondent Tyson. Therefore, its premises permit also should be revoked. (Factual Findings 1-84; Legal Conclusions 1, 2, 3, 5 & 6.)

8. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of her governing licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Here, it was established that respondents violated provisions of the Veterinary Medicine Practice Act, and that the reasonable costs incurred by the Board in investigating and prosecuting this matter are $26,043.75. (Factual Findings 85-87; Legal Conclusions 3, 5 & 6.)

9. Section 4883 allows the Board to assess a fine, as provided in section 4875, for a violation of any subdivision of section 4883. Under section 4875, the Board has the authority to assess a fine not in excess of $5,000 against a licensee for any of the causes specified in section 4883, and that such a fine may be assessed in lieu of, or in addition to, a suspension or revocation. In light of the revocation of their licenses, assessing an additional $5,000 fine against respondents is not necessary to protect the public and therefore not warranted.

ORDER

Veterinary Medical License Number VET 13995, issued to respondent Melissa Ann Tyson, is revoked.

Premises Permit Number HSP 5890, issued to respondent Crown City Veterinary Medical Group, Inc., is revoked.

Respondents Melissa Ann Tyson and Crown City Veterinary Medical Group, Inc., jointly and severally, are ordered to pay the Veterinary Medical Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3, in the amount of $26,043.75.

DATE: September 12, 2019

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings