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Stephanie Nichols-Young (010393)
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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

CV 91-14416

DOROTHY R. KRCMAR and JOSEPH A.)
KRCMAR, wife and husband, and)
ANGELA KRCMAR LEONARD, a married)
woman,)

No. _____

COMPLAINT

Plaintiffs,

v.

(Tort - Non-Motor
Vehicle)

TIMOTHY A. KIRKLAND and JANE DOE)
KIRKLAND, husband and wife;)
SYSEL ANIMAL HEALTH SERVICES)
INC, dba SYSEL ANIMAL HOSPITAL,)
an Arizona corporation; ABC)
CORPORATIONS I-X; XYZ)
PARTNERSHIPS I-X; JOHN DOES I-X;)
and JANE DOES I-X,)

Defendants.

Plaintiffs allege as follows:

1. Plaintiffs are residents of Maricopa County,
Arizona, and plaintiff Dorothy R. Krcmar (hereinafter
referred to as "Dorothy") was the owner of an American
Kennel Club registered Shih Tzu dog named D's Jaunty

What
info

1 Adorable Krcmar (hereinafter referred to as "Jaunty").
2 Plaintiff Angela Krcmar Leonard (hereinafter referred to
3 as "Angela") is a married woman and is the daughter of
4 Dorothy and Joseph A. Krcmar. At times relevant to this
5 lawsuit, Angela was a single woman

6 2. Defendant Timothy A. Kirkland (hereinafter
7 referred to as "Kirkland") is a veterinarian and, at all
8 times relevant to this action, was licensed to practice
9 in the state of Arizona.

10 3. Sysel Animal Health Services, Inc. is an
11 Arizona corporation with its principal place of business
12 in Mesa, Maricopa County, Arizona, and which does
13 business as Sysel Animal Hospital.

14 4. ABC Corporations I-X, XYZ Partnerships I-X,
15 John Doe I-X, and Jane Doe I-X are the fictitious names
16 of said defendants who, upon information and belief,
17 participated in disposal of the body of Jaunty subsequent
18 to his death, without plaintiff's knowledge or consent.

19 5. On June 13, 1989, Angela took Jaunty to Sysel
20 Animal Hospital for an examination of his ears. This was
21 Jaunty's first visit to Sysel Animal Hospital. Jaunty
22 was in good health, but he had been continually
23 scratching his ears.

24 6. Upon information and belief, Kirkland was
25 employed by Sysel Animal Hospital as a veterinarian on
26 June 13, 1989.
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1 7. Kirkland was assigned to treat Jaunty. From
2 the outset of the examination, / Kirkland appeared
3 impatient and angry. Although it was the first time
4 Kirkland had seen Jaunty, he did not take a temperature,
5 listen to Jaunty's heart or lungs, or check his eyes or
6 weigh him. Instead, Kirkland immediately began pulling
7 hair out of Jaunty's ears. While pulling out the hair,
8 Kirkland told Angela that the problem was "nothing major"
9 and that Jaunty only had a simple yeast infection in his
10 ears. Jaunty did not respond aggressively to Kirkland's
11 hair pulling. Instead, he backed away from Kirkland.

12 8. Kirkland instructed his veterinary assistant
13 to hold Jaunty; the veterinary assistant complied, but
14 Kirkland was not happy with the manner in which the
15 assistant held Jaunty. Kirkland instructed the assistant
16 to hold Jaunty by grasping him under his chin and holding
17 down Jaunty's rear legs with his other hand. Kirkland
18 demonstrated for the assistant, who appeared never to
19 have used this technique before. Jaunty began whining
20 and Angela expressed concern about how Jaunty was being
21 treated. The veterinary assistant asked Angela if she
22 was all right, and Kirkland told the assistant, "Don't
23 worry about her. Do your job and hold this dog for me."

24 9. Kirkland left his assistant holding the dog
25 in the manner demonstrated and left the room. He
26 returned with two muzzles. He attempted to place one of
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1 the muzzles on Jaunty's snout, but it was too big and
2 fell off twice. He tried the same muzzle again and
3 pulled it very tight in order to keep it in place. There
4 was no reason to muzzle Jaunty as he took no aggressive
5 action towards either Kirkland or his assistant, and had
6 never bitten or attempted to bite anyone.

7 10. With the muzzle in place, Kirkland continued
8 to pull out hair from Jaunty's ear. He informed Angela
9 that he was not going to tranquilize Jaunty during that
10 visit, but if the ear did not clear up, he would have to
11 do more work and tranquilize Jaunty next time. Kirkland
12 then picked up Jaunty and went into the back room,
13 telling Angela he was going to do an ear flush. When
14 Kirkland picked up Jaunty, he appeared to be in a great
15 hurry. Angela could hear Jaunty wheezing as he was taken
16 out of the room. When Angela turned back to the
17 examination table, she noticed that Jaunty had defecated
18 on the table.

19 11. Kirkland reappeared, took Jaunty's file, and
20 told Angela to wait in the reception room, indicating
21 that it wouldn't take long. Approximately 25 minutes
22 later, Kirkland called Angela back into the examining
23 room and told her that Jaunty had respiratory problems.
24 Angela asked if Jaunty was okay, and Kirkland responded,
25 "No, your dog is dead." Kirkland then informed Angela
26 that during the ear flush, Jaunty had turned blue. He
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A-disposed
deaf
rest

1 went on to say that he had attempted to perform CPR and
2 had given oxygen, but could not revive Jaunty. He told
3 Angela that Jaunty "must have had a bad heart."

4 12. Dorothy and Katherine, another of Dorothy's
5 daughters, then arrived at Sysel Animal Hospital and
6 Kirkland informed all three of them that "these things
7 happen." Dorothy suggested that something should be done
8 to determine how Jaunty died. Kirkland suggested that he
9 could perform an autopsy. Dorothy said she would have to
10 think about it, but whatever happened, she wanted
11 Jaunty's body back. Dorothy, Katherine and Angela then
12 left Sysel Animal Hospital.

13 13. Dorothy called another veterinary hospital
14 and explained the circumstances and asked how she could
15 determine the cause of Jaunty's death. That veterinarian
16 suggested that she have an autopsy performed and
17 recommended Southwest Veterinary Diagnostics, Inc.
18 (hereinafter referred to as "Southwest") Dorothy then
19 telephoned Kirkland and requested that a necropsy be
20 performed by Southwest on the dog. Kirkland had Jaunty's
21 body delivered to Southwest.

22 14. Dorothy called Southwest on the morning of
23 June 14, 1989 and she was told that she would receive a
24 copy of the necropsy report when it was available. On
25 June 15, when Dorothy called Southwest Veterinary
26 Diagnostics, Inc. to obtain a copy of the report, she was
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1 informed that they could not give her any information and
2 that she would have to get all information, including a
3 copy of the report, from Kirkland. Dorothy then inquired
4 where she could pick up Jaunty's remains and was informed
5 that Kirkland had authorized disposition of the body.

6 15. The Krcmars never authorized disposition of
7 Jaunty's body. They intended to bury Jaunty after the
8 necropsy was performed.

9 16. On June 15, 1989, Dorothy also contacted
10 Kirkland's office and asked for the results of the
11 necropsy report. Kirkland told Dorothy that he did not
12 know the results of the report. He also informed Dorothy
13 that he did not know where Jaunty's body was and had not
14 taken any action in that regard.

15 17. On June 15, 1989, Dorothy again telephoned
16 Southwest and spoke to an intermediary for Dr. Wigton,
17 the pathologist who performed the necropsy on Jaunty,
18 who informed her that on June 14, 1989, a preliminary
19 copy of Dr. Wigton's necropsy report was provided to
20 Kirkland and that Kirkland had specifically authorized
21 disposition of Jaunty's body.

22 18. The necropsy report which was provided by
23 Southwest stated that Jaunty was killed as a result of
24 trauma to his throat and larynx which resulted in his
25 painful suffocation.
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19. Dorothy filed a complaint with the Arizona Veterinary Medical Examining Board on or about June 15, 1989. On April 18, 1990, the Board issued its Findings of Fact and Conclusions of Law and Order, which are attached hereto as Exhibit A and incorporated by this reference. In the Order, the Board found that Kirkland committed a violation of the provisions of the Veterinary Practices Act, specifically A.R.S. § 32-2232.11, as it relates to A.R.S. § 32-2201.6(c), in that Dr. Kirkland's treatment of Jaunty was negligent and resulted in unnecessary suffering and death caused by disregard of established principles. As a result of the Board's findings, Kirkland was formally censured and his license was placed on probation for six months.

COUNT ONE

(Veterinary Malpractice -- Negligence)

20. Plaintiffs incorporate the allegations of paragraphs 1 through 19 as if fully set forth.

21. On or about June 13, 1989, plaintiffs consulted defendant Kirkland for the purpose of obtaining diagnosis and treatment of Jaunty, and plaintiff employed defendants to care for and treat Jaunty and do all things necessary for Jaunty's care and treatment.

22. On or about June 13, 1989, for valuable consideration given, defendants agreed and undertook to diagnose and treat Jaunty and do all things necessary and

1 proper in his care and treatment. Said defendants, and
2 each of them, entered into such employment, individually
3 and by and through their employees and agents.

4 23. On or about June 13, 1989, defendants, and
5 each of them, so negligently treated and cared for Jaunty
6 that plaintiffs were caused to and did suffer the
7 injuries and damages hereinafter alleged. In so doing,
8 defendants failed to use the degree of skill and learning
9 ordinarily possessed and exercised by veterinarians in
10 the care and treatment of dogs in Maricopa County,
11 Arizona.

12 24. Jaunty, injured by and through the conduct of
13 defendants, and each of them, had a peculiar, special and
14 sentimental value to plaintiff, in that Jaunty had been
15 plaintiffs' constant companion and a loving and respected
16 member of the Krcmar family for three and a half years,
17 at the time of the incident at issue in this lawsuit.
18 Defendants had notice of the particular value of Jaunty
19 in that Angela stressed said value and the need for
20 careful diagnosis in treatment of Jaunty at the time of
21 delivery of Jaunty to the defendants.

22 25. As a proximate result of the conduct of
23 defendants, plaintiffs were damaged in that their dog,
24 Jaunty, suffered severe bodily injury and death.
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COUNT TWO

(Conversion)

26. Plaintiffs incorporate the allegations of paragraphs 1 through 25 as if fully set forth.

27. Plaintiffs were the owner of Jaunty as more specifically enumerated above.

28. Defendants converted Jaunty at a time when plaintiffs were Jaunty's owner and entitled to possession of Jaunty.

29. Defendants have wrongfully exercised the right of ownership over Jaunty.

30. Plaintiffs have been damaged as a result of defendants' conversion of Jaunty in an amount to be proven at trial.

COUNT THREE

(Negligent Infliction of Emotional Distress)

31. Plaintiffs incorporate the allegations of paragraphs 1 through 30 as if fully set forth.

32. On or about June 13, 1989, plaintiffs became aware of the damage and injury done to Jaunty by defendants.

33. Given the peculiar, special and sentimental value of Jaunty to plaintiffs, it was reasonably foreseeable that plaintiffs would suffer great mental distress and pain and suffering as a result of the tortious conduct of defendants, and each of them.

1 34. As a further proximate result of the
2 negligence of defendants, and each of them, plaintiffs
3 have suffered great emotional and mental pain and
4 suffering, upon being informed of the damage and injury
5 done to Jaunty by defendants.

6 COUNT FOUR

7 (Punitive Damages)

8 35. Plaintiff incorporates the allegations of
9 paragraphs 1 through 34 as if fully set forth.

10 36. In treating Jaunty, defendant Kirkland
11 deliberately pursued a course of conduct knowing and
12 consciously disregarding that it created a substantial
13 risk of significant harm to others .

14 WHEREFORE, plaintiff prays for judgment against
15 defendants, and each of them, as follows:

16 A. For general damages, including Jaunty's
17 market value in an amount not less than \$400 and lost
18 income in an amount not less than \$1000;

19 B. For special damages, including sentimental
20 value in an amount not less than \$2000;

21 C. For damages for emotional distress, pain and
22 suffering in an amount not less than \$10,000;

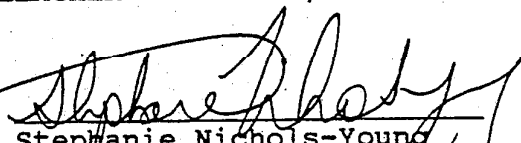
23 D. For punitive and exemplary damages in the
24 amount not less than \$10,000;

25 E. For such other and further relief as the
26 Court deems just under the circumstances.
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DATED this 4th day of June, 1991.

GALLAGHER & KENNEDY, P.A.

By 
Stephanie Nichols-Young
2600 North Central Avenue
Phoenix, Arizona 85004-3020
Attorneys for Plaintiff

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[illegible]

I am one of the plaintiffs in this action and I am authorized to execute this Verification on behalf of same; I have read the foregoing Complaint and know the contents thereof; all of the matters therein stated are true, except as to those matters stated upon information and belief, and as to those matters, I believe the same to be true.

Dorothy Krcmar
DOROTHY KRCMAR

SUBSCRIBED AND SWORN to before me this 1 day of June, 1991, by Dorothy Krcmar.

Letitia R. Corral
Notary Public

My Commission Expires:

BEFORE THE ARIZONA STATE VETERINARY
MEDICAL EXAMINING BOARD

CV 91-14416

In the Matter of the Hearing to)	NO. 89-48
Determine Whether to Discipline)	
License No. 1761 Issued to:)	FINDINGS OF FACT
Timothy A. Kirkland, D.V.M.)	CONCLUSIONS OF LAW
_____)	and ORDER

The Arizona State Veterinary Medical Examining Board (hereinafter referred to as "Board") initiated an investigation after receiving information indicating that Timothy A. Kirkland, D.V.M. may have violated A.R.S. § 32-2232.

The Board conducted an informal interview with Dr. Kirkland on March 21, 1990. Dorothy Krcmar and Katherine Krcmar, complainants, were present and participated in the informal interview. Basel R. Sbai, who was assisting Dr. Kirkland at the time of the incident, was also present and gave testimony at the request of the Board.

The Board has considered all information and investigative materials concerning this matter. The Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1) On June 13, 1989, Angela Krcmar, presented Jaunty, the Krcmar's three and one-half year old Shih Tzu to Dr. Kirkland at Sysel Animal Hospital to have his ears checked.

2) Dr. Kirkland proceeded to examine and pluck hair from Jaunty's ears. When Jaunty resisted Ms. Krcmar's restraint, Dr. Kirkland instructed his technician, Mr. Sbai, to assist in restraining Jaunty and they placed an oversize muzzle on the animal.

3) Dr. Kirkland and Mr. Sbai moved into the treatment area where Jaunty's ears could be flushed. Dr. Kirkland instructed Mr. Sbai to place Jaunty in lateral recumbency with both front and rear legs held. Mr. Sbai indicated that Dr. Kirkland became very angry at Jaunty's resistance and instructed Mr. Sbai and Keith, a kennel worker, to hold Jaunty down.

4) During the course of treatment, it was noted that Jaunty was cyanotic and apneic. Jaunty was intubated, given oxygen, epinephrine and CPR, but attempts to revive him were unsuccessful.

5) The Krcmars gave permission for a necropsy to be performed by Dr. David Wigton at the Southwest Veterinary Diagnostics, Inc. The necropsy demonstrated pulmonary hemorrhage and edema and a collapse of the laryngeal cartilage leading to loss of a patent airway and a subsequent respiratory collapse.

6) The disposition of the body was made by the laboratory which is customary following necropsy, but the Krcmars had not been informed in advance of this procedure and no other arrangements were made.

7) The Krcmars had requested copies of the medical records and the necropsy results, but Dr. Kirkland did not make records available to them on the advice of his insurance carrier.

CONCLUSIONS OF LAW

1) Pursuant to A.R.S. §§ 32-2233 and 32-2234, the Board has subject matter and personal jurisdiction over Dr. Timothy Kirkland in this action.

2) Dr. Kirkland has committed a violation of the provisions of this chapter or a rule adopted by the Board, specifically, A.R.S. § 32-2232.11 as it relates to A.R.S. § 32-2201.6 (c) in that Dr. Kirkland's treatment of Jaunty was negligent and resulted in unnecessary suffering and death caused by disregard of established principles.

ORDER

In view of the Findings of Fact and Conclusions of Law as described above, the Board hereby issues the following Order:

1) IT IS HEREBY ORDERED that Dr. Timothy A. Kirkland is formally censured.

2) IT IS FURTHER ORDERED that Dr. Kirkland's license be placed on probation for a period of six months, beginning May 15, 1990, and ending November 15, 1990, with the following conditions:

A) Dr. Kirkland is required to obtain two to four hours of continuing education in the area of treatment of respiratory problems. This continuing education is in addition to the twenty hours required during the biennial renewal period.

B) Dr. Kirkland is required to pay a civil penalty of \$200.00 on or before May 28, 1990.

2) This Order is conclusive evidence of the matters described herein and may be considered by the Board in determining an appropriate sanction in the event a subsequent violation occurs.

3) Pursuant to A.R.S. § 32-2234.C., Dr. Kirkland has a right to seek rehearing before the Board by filing a petition in writing with the Board within 20 days of receipt of this Order.

DATED this 18th day of April, 1990.

FOR THE BOARD:

ARIZONA STATE VETERINARY
MEDICAL EXAMINING BOARD

Robert L. Hatch, D.V.M.
Chairman

by: Judy Zingg
Judy Zingg
Executive Director

MEMBERS CONCURRING:

Peg Morrison, D.V.M.
Marianne E. Shirk, D.V.M.
Inez Schroeder, D.V.M.
Kay Bickford
Michael H. Nolan

Copy of the foregoing mailed certified
this 19th day of APRIL, 1990, to:

Timothy A. Kirkland, D.V.M.
9181 S. Alvey Lane
Sandy, Utah 84093
Cert No. P852 448 546

Copy of the foregoing mailed this
19th day of April, 1990, to:

Ms. Dorothy Krcmar
2637 E. Obispo Circle
Mesa, AZ 85202

Members of the Board

By J. Morandy

260.60

COPY
MAY 20 1992

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(602) 530-8000
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DOROTHY R. KRCMAR and JOSEPH A.)
KRCMAR, wife and husband, and)
ANGELA KRCMAR LEONARD, a married)
woman,)

Plaintiffs,)

v.)

TIMOTHY A. KIRKLAND and JANE DOE)
KIRKLAND, husband and wife;)
SYSEL ANIMAL HEALTH SERVICES)
INC, dba SYSEL ANIMAL HOSPITAL,)
an Arizona corporation; ABC)
CORPORATIONS I-X; XYZ)
PARTNERSHIPS I-X; JOHN DOES I-X;)
and JANE DOES I-X,)

Defendants.)

No. CV 91-14416

NOTICE OF SETTLEMENT AND
REQUEST FOR CONTINUATION
ON THE INACTIVE CALENDAR

(Assigned to the Hon.
Stanley Z. Goodfarb)

(EXPEDITED RULING
REQUESTED - THIS MATTER
SET TO BE DISMISSED ON
JUNE 5, 1992)

Plaintiffs, Dorothy R. Krcmar and Joseph A.
Krcmar, wife and husband, and Angela Krcmar Leonard,
through counsel undersigned, hereby notify the Court that
the parties have verbally reached a settlement agreement
whereby defendants have agreed to pay plaintiffs
\$4,875.00. Plaintiffs request that this matter be

FINCHER, ARIZONA 85004 3020
18021 530 8000

1 continued on the inactive calendar for a period of 60
2 days in order to allow the parties to document the
3 settlement agreement. At this time, this matter is set
4 to be dismissed from the inactive calendar on June 5,
5 1992. As a result, plaintiffs respectfully request that
6 the Court rule on this motion prior to that date.

7 DATED this 29th day of May, 1992.

8
9 GALLAGHER & KENNEDY, P.A.

10
11 By 

12 Stephanie Nichols-Young
13 2600 North Central Avenue
Phoenix, Arizona 85004-3020
Attorneys for Plaintiffs

14 COPY of the foregoing
15 hand-delivered this 29th
day of May, 1992, to:

16 The Honorable Stanley Z. Goodfarb
17 Judge of the Superior Court
Central Court Building
201 West Jefferson Room 9B
18 Phoenix, Arizona 85003

19 COPY of the foregoing
20 mailed this 29th day
of May, 1992, to:

21 Larry J. Cohen, Esq.
22 RAKE, DOWNEY, MCGOVERN & SHORALL, P.C.
Country Club Manor
1313 East Osborn Suite 100
23 Phoenix, Arizona 85014
Attorney for Defendants Kirkland
24 and Sysel Animal Health Services, Inc.

25 
26 81405
27