

SOAH DOCKET NO. 578-18-5124

TEXAS BOARD OF VETERINARY § BEFORE THE STATE OFFICE
MEDICAL EXAMINERS, §
Petitioner §
v. § OF
KERRY CLINE, D.V.M., §
Respondent § ADMINISTRATIVE HEARINGS

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TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS, Petitioner	§	BEFORE THE STATE OFFICE
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KERRY CLINE, D.V.M., Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Veterinary Medical Examiners (Board) seeks disciplinary sanctions against Respondent Kerry Cline, D.V.M., a veterinarian licensed by the Board. Staff alleges that Dr. Cline violated the Board's rules with respect to prescribing, controlling, and maintaining records of controlled drugs; chronic or habitual intoxication or drug addiction; treating a human; and failing to report a criminal charge to the Board.

The Administrative Law Judge (ALJ) determines that Dr. Cline committed some, but not all, of the alleged violations. The ALJ determines that Dr. Cline's violations posed an imminent peril to the public and are therefore Class A violations under the Board's disciplinary guidelines. The ALJ recommends that she receive a formal reprimand; that her license be placed on probated suspension for five years; that her license be restricted to prohibit her from prescribing or obtaining controlled substances through her practice for the first three years of probation; that she submit her practice records for quarterly review to another Board-approved veterinarian, who shall submit quarterly reports to the Board; and that she be assessed an administrative penalty of \$2,500.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

On June 29, 2018, the Executive Committee of the Board determined that Dr. Cline's continued practice of veterinary medicine constituted a continuing or imminent threat to the public and issued an Order suspending Dr. Cline's license.¹ On July 10, 2018, a hearing was held before the Executive Committee of the Board to decide if the suspension of Dr. Cline's license should remain in force. The Executive Committee of the Board determined that Dr. Cline's license should remain suspended and that disciplinary proceedings should be initiated against Dr. Cline.

Section 801.409(d) of the Texas Occupations Code requires a final hearing to be held not later than the 60th day after the date the suspension is ordered. On August 1, 2018, Dr. Cline agreed to extend the deadline by which a final hearing must be held until September 11, 2018.²

The hearing on the merits was held on September 11, 2018, before ALJ Joanne Summerhays at the hearing facilities of the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Stephen White, Staff Attorney. Dr. Cline appeared and was represented by attorney Brian Bishop. After the parties filed post-hearing closing arguments and participated in post-hearing mediation, the record closed on November 20, 2018.

II. APPLICABLE STATUTES AND RULES

The Board is authorized to take disciplinary action against a Texas veterinarian who has engaged in conduct that violates the Board's rules of professional conduct.³ Among the Board's disciplinary powers is the authority to revoke or suspend a license, place a suspended license holder on probation, reprimand a license holder, impose administrative penalties, and require

¹ Staff Ex. 3.

² Staff Ex. 4.

³ Tex. Occ. Code §§ 801.401, .402(6). The Board's rules are contained in chapters 571-77 of part 24 of title 22 of the Texas Administrative Code. For convenience, these provisions may be cited in the text of the Proposal for Decision as "Board Rule XXX."

license holders to participate in continuing education programs.⁴ The Board may require a license holder whose license suspension is probated to:

- (1) report regularly to the [B]oard on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the [B]oard; or
- (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the [B]oard in those areas that are the basis of the probation.⁵

In addition, when a veterinarian is subject to disciplinary action, the Board may order the veterinarian “based on a finding that the veterinarian is impaired by chemical dependency or mental illness to submit to care, counseling, or treatment through the peer assistance program.”⁶ An “impaired professional” is defined as “an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.”⁷

In this case, Staff alleges that Dr. Cline violated the following Board rules (only relevant portions of the rules quoted):

- **Board Rule 573.41 Use of Prescription Drugs**

It shall be unprofessional conduct and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto⁸

⁴ Tex. Occ. Code §§ 801.401, .451.

⁵ Tex. Occ. Code § 801.401(c).

⁶ Tex. Occ. Code §§ 801.157(b), .401(e).

⁷ Tex. Occ. Code § 801.401(e); Tex. Health & Safety Code § 467.001(3).

⁸ 22 Tex. Admin. Code § 573.41(b).

- **Board Rule 573.50 Controlled Substances Records Keeping for Drugs on Hand**

Texas veterinarians shall maintain at their place[s] of business records of all scheduled drugs listed in the Texas Controlled Substances Act in their possession A record shall be kept for each scheduled drug. The records shall be complete, contemporaneous, and legible⁹

- **Board Rule 573.60 Prohibition Against Treatment of Humans**

A veterinarian shall not provide care and treatment of humans including prescribing and/or dispensing prescription medication for personal use by the veterinarian and/or another human.¹⁰

- **Board Rule 573.61 Minimum Security for Controlled Substances**

Controlled substances listed in Schedules I, II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet or security cabinet.¹¹

- **Board Rule 573.70 Reporting of Criminal Activity**

A licensee . . . shall report to the Board no later than the 30th day after he or she is charged with, or convicted of, any misdemeanor related to the practice of veterinary medicine¹²

- **Board Rule 573.4 Adherence to the Law**

No licensee shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the licensee's professional practice A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this rule. Proof of the commission of the act while in the practice of, or under the guise of the practice of, either veterinary medicine or equine dentistry, is sufficient for action by the Board under this rule.¹³

⁹ 22 Tex. Admin. Code § 573.50.

¹⁰ 22 Tex. Admin. Code § 573.60.

¹¹ 22 Tex. Admin. Code § 573.61(4).

¹² 22 Tex. Admin. Code § 573.70. This provision was amended effective September 24, 2018. The prior language is quoted here, but there is no substantive change for purposes of this case.

¹³ 22 Tex. Admin. Code § 573.4.

Staff also alleges that Dr. Cline is subject to discipline pursuant to Texas Occupations Code § 801.402(3), which states in relevant part, “A person is subject to denial of a license or to disciplinary action . . . if the person . . . is chronically or habitually intoxicated, chemically dependent, or addicted to drugs”, and § 801.402(4) for engaging in “dishonest or illegal practices in or connected with the practice of veterinary medicine.”

Board Rule 575.25 sets out the Board’s Recommended Schedule of Sanctions. Licensees considered as presenting imminent peril to the public will be considered Class A violators.¹⁴ Class A violations include “conviction of a felony, including a felony conviction under . . . Chapter 481 relating to Controlled Substances,” “chronic or habitual intoxication or chemical dependency, or addiction to drugs,” and “engaging in practices which are violative of the Rules of Professional Conduct[.]”¹⁵

Maximum penalties for Class A violations include revocation of the violator’s license; a penalty not exceeding \$5,000 for each violation per day; continuing education in a specified field relevant to the violation; quarterly reporting certifying compliance with Board orders; and/or passing relevant professional licensing exams.¹⁶

In assessing Class A sanctions and penalties, consideration shall be given to:

the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.¹⁷

¹⁴ 22 Tex. Admin. Code § 575.25(a)

¹⁵ 22 Tex. Admin. Code § 575.25(a)(1)(A), (E), (H).

¹⁶ 22 Tex. Admin. Code § 575.25(a)(3).

¹⁷ 22 Tex. Admin. Code § 575.25(a)(2).

Class B violations, like Class A violations, include “engaging in practices which are violative of the Rules of Professional Conduct[.]”¹⁸ However, Class B violations do not “rise to the level of creating an imminent peril to the public.” “When determining whether a violation is a Class B, consideration shall be given . . . to the combination of charges which might invoke Class A and/or C violations.”¹⁹

Class C violations include minor Class A and B violations if there is no history of previous violations and no potential hazard to public health, safety, or welfare.²⁰

III. EVIDENCE

A. Background

Dr. Cline is a Texas veterinarian and holds Texas Veterinary License No. 12410, issued by the Board on April 9, 2012, which was in effect at all times material to this contested case.²¹ At the time of these events, Dr. Cline was the owner and sole practitioner of Dr. Kerry’s PetVet in Conroe, Texas.

B. Staff’s Evidence

Staff submitted 21 exhibits, which were admitted into the record. Staff called Andrea Moorner, a Licensed Clinical Social Worker (LCSW) and a Licensed Chemical Dependency Counselor (LCDC); Michael Campos, a Board investigator; Officer Jared O’Farrell of the Conroe Police Department; and Emily Able, Dr. Cline’s case handler at the Board’s approved peer assistance program.

¹⁸ 22 Tex. Admin. Code § 575.25(b)(1)(B).

¹⁹ 22 Tex. Admin. Code § 575.25(b).

²⁰ 22 Tex. Admin. Code § 575.25(c)(1).

²¹ Staff Ex. 1.

1. Testimony and Report of Officer Jared O'Farrell

Officer O'Farrell testified that at approximately 2:00 p.m. on April 4, 2018, he and Jay Williams, another Conroe Police Department officer, responded to a report of a driver slumped over the steering wheel of a vehicle that had gone off the road and into the woods. He stated that the driver of the vehicle was later identified as Dr. Cline. He recorded his investigation on his body camera and filed a report, both of which were admitted in evidence.²² The two officers observed Dr. Cline sitting in the driver's seat of the vehicle, talking on a cell phone with the windows of her vehicle rolled up. According to the police report, Dr. Cline ignored the officers' initial attempts to speak with her and their requests to turn off her vehicle. When she finally responded, Officer O'Farrell reported, Dr. Cline was talking to her husband on the telephone and told her husband the wrong name of the road she was on, even though it was eventually determined that she lived in a neighborhood only a few miles away. Officer O'Farrell stated Dr. Cline's speech was "slurred and slow."²³ Officer O'Farrell opined that Dr. Cline had "a sedated appearance" and could possibly be intoxicated with alcohol although there was no smell of alcohol.²⁴ He noted Dr. Cline's pupils were small or constricted.²⁵

Officer O'Farrell observed two uncapped syringes in plain view inside Dr. Cline's vehicle with "fairly fresh" blood (which he described as slightly coagulated) on the needles, as well as the open packaging for the syringes.²⁶ Officer O'Farrell testified that based on his experience, the "fresh" blood on the syringes meant the syringes had recently been used as blood dries quickly. He speculated the blood could have been one to three hours old. He also observed a full vial of midazolam, a scheduled intravenous (IV) controlled substance, which Dr. Cline had

²² Staff Ex. 17 (Officers' body camera videos on CD), Staff Ex. 7 (Conroe Police Department Incident Report at 26-30, 57-58).

²³ Staff Ex. 7 at 26-30, 57-58.

²⁴ Staff Ex. 7 at 26-30, 57-58.

²⁵ Staff Ex. 7 at 26-30, 57-58.

²⁶ Staff Ex. 7 at 26-30, 57-58.

been sitting on.²⁷ When asked what the vial of midazolam was for, he said, Dr. Cline told the officers she was a veterinarian and was on her way to a house call.²⁸

Officer O'Farrell testified that an empty vial of midazolam was found in the driver's door pocket.²⁹ The officers inventoried Dr. Cline's purse in which they found five syringes that appeared to be used, a large empty vial of morphine, which is a Schedule II controlled substance, and ten small full bottles labeled midazolam.³⁰ Additionally, the officers found a bottle of Tramadol tablets, which is a Schedule IV controlled substance, next to Dr. Cline with a label showing Dr. Cline had dispensed the Tramadol tablets to "Pablo" in January 2018.³¹

When Officer O'Farrell asked Dr. Cline if she had taken any of the controlled substances found in her truck, Dr. Cline denied having taken any of the controlled substances, or having taken any intoxicating substance prior to driving.

Officer O'Farrell believed Dr. Cline was impaired at the scene of the accident. He offered Dr. Cline the opportunity to take a field sobriety test, a breathalyzer, or a blood test but she declined.³²

Dr. Cline was arrested and charged with driving while intoxicated. The officers obtained a search warrant for Dr. Cline's blood.³³ The results of the initial blood test showed no alcohol.³⁴ The final blood test results showed both morphine (at 0.01 milligrams per liter of blood) and midazolam (no specific amounts reported).³⁵

²⁷ Staff Ex. 7 at 26-30, 57-58.

²⁸ Staff Ex. 7 at 26-30, 57-58.

²⁹ Staff Ex. 7 at 26-30, 57-58.

³⁰ Staff Ex. 7 at 26-30, 57-58.

³¹ Staff Ex. 7 at 26-30, 57-58.

³² Staff Ex. 7 at 26-30, 57-58.

³³ Staff Ex. 8.

³⁴ Staff Ex. 8.

³⁵ Staff Ex. 12.

On April 19, 2018, Dr. Cline pleaded guilty and was convicted of driving while intoxicated. Dr. Cline was sentenced to three days in county jail and a \$1,200 fine.³⁶

2. Testimony of Michael Campos

Board Investigator Campos stated that in June 2018, he received an email with information regarding Dr. Cline's arrest. According to Mr. Campos, that was the first time the Board learned of Dr. Cline's arrest and conviction. He stated that Dr. Cline had failed to inform the Board of the conviction. The probable cause affidavit and police report from the Conroe Police Department were attached to the email.³⁷ On June 29, 2018, Mr. Campos conducted an on-site inspection of Dr. Cline's clinic. He was accompanied by Drug Enforcement Administration (DEA) Agent Monique Fernandez and Conroe Police Detective (and a member of DEA Task Force) Gerrit Wolfhagen.³⁸

Mr. Campos stated that the investigation focused on Dr. Cline's records of the controlled drugs—morphine, Tramadol, and midazolam—that the police reported finding at the scene of the offense. According to Mr. Campos, the inspection revealed that Dr. Cline did not have a controlled substance log for injectable morphine, the empty vials of which were found by Conroe Police Department at the scene of the accident, despite invoices showing Dr. Cline had purchased five 20 milliliter (ml) single dose vials and five 10 ml single dose vials of injectable morphine on January 9, 2018.³⁹

Mr. Campos also noted that Dr. Cline's controlled substance log for Tramadol included an entry showing Dr. Cline had dispensed Tramadol to her dog Pablo in January 2018.⁴⁰ He stated that he reviewed the records for Pablo, and there was no log for a prescription for Pablo in

³⁶ Staff Ex. 9.

³⁷ Staff Exs. 7-9.

³⁸ Staff Ex. 6.

³⁹ Staff Ex. 13 at 130.

⁴⁰ Staff Ex. 10 at 114.

April 2018. Dr. Cline told him that Pablo had been deceased for several months at the time Dr. Cline was found with the Tramadol in April 2018.⁴¹

Mr. Campos stated he found no records showing that the controlled substances in Dr. Cline's possession at the time of the offense (morphine, Tramadol, and midazolam) had been properly recorded in a log. He stated that he asked Dr. Cline about the lack of documentation, and she was unable to give him an answer.

Mr. Campos said he observed marks on the back of Dr. Cline's hands and ankles that, based on his experience dealing with intravenous drug users, he believed to be needle marks. He stated his first job was with the Sheriff's Department where he worked undercover narcotics, and he also worked at the Travis County Jail for two years. He had experience with intravenous drug users at those jobs and believed he could recognize the marks on Dr. Cline as "track marks," which are wounds that typically result from injecting drugs.⁴² Mr. Campos asked if he could photograph her wrists and ankles but, he testified, Dr. Cline refused and tucked her hands underneath her armpits.⁴³ On cross-examination, Mr. Campos acknowledged those "track marks" had disappeared at the time of the hearing, approximately two-and-half months later. He admitted that he was not medically trained and was unable to tell how fast a track mark could heal.

Following the inspection, Dr. Cline voluntarily surrendered her DEA registration and all controlled substances on hand.⁴⁴

Mr. Campos stated that he was told by police that Dr. Cline's husband had been in trouble for violent acts in the past.

⁴¹ Staff Ex. 10 at 110.

⁴² Staff Ex. 6 at 19.

⁴³ Staff Ex. 6 at 19.

⁴⁴ Staff Ex. 11.

3. Testimony of Emily Abel

Ms. Abel is employed by Professional Recovery Network (PRN).⁴⁵ She explained that PRN is a Board-approved peer assistance program that assists veterinarians and other professionals who have substance abuse or mental health issues, pursuant to Texas Occupations Code § 801.157.⁴⁶ She has a degree in social work. She is the case handler for Dr. Cline. She testified that following the temporary suspension of Dr. Cline's veterinary license, Dr. Cline submitted to a substance abuse evaluation monitored by PRN.

Ms. Abel performed an intake for Dr. Cline on July 3, 2018. After the intake, Ms. Abel referred Dr. Cline to Andrea Moorner for a mental health and substance abuse evaluation. On July 18, 2018, Ms. Abel discussed Ms. Moorner's recommendations with Dr. Cline. Ms. Abel later contacted Dr. Cline to follow-up and she felt that Dr. Cline intended to get the three-day in-patient assessment recommended by Ms. Moorner. However, to the extent of Ms. Abel's knowledge, Dr. Cline did not do so. Ms. Abel admitted that the PRN-recommended in-patient assessment was not located in the State of Texas, and would have required Dr. Cline to be away from home for several days.

Ms. Abel stated that evaluations by private treating providers are not accepted by PRN because of the risk of bias. The goal of treating providers, in her opinion, is to advocate for their client, not to give an objective evaluation. Ms. Abel admitted she was not aware of the credentials of Dr. Cline's treating provider, Dr. Boyd.

4. Testimony of Andrea Moorner, LCSW, LCDC

Ms. Moorner has been licensed as a clinical social worker for two years, and was licensed as a master social worker for two years prior to that. She also has a drug counselor license and she counsels individuals with substance abuse issues. Ms. Moorner has conducted an estimated

⁴⁵ Staff Ex. 18.

⁴⁶ Texas Occupations Code § 801.157(a) requires the Board to establish or approve a peer assistance program for impaired veterinarians.

50 mental health and substance abuse evaluations for the Board and the Texas State Board of Pharmacy.⁴⁷

On July 6, 2018, Ms. Moorer evaluated Dr. Cline for substance abuse and mental health. She conducted an hour-and-half clinical interview with Dr. Cline, reviewed documents submitted by PRN and the Board, and administered diagnostic tests to Dr. Cline. She then made recommendations for, and a diagnosis of, Dr. Cline.⁴⁸

During the clinical interview, Ms. Moorer stated, Dr. Cline described being arrested for driving while intoxicated. Dr. Cline told Ms. Moorer that on the day she was arrested, she worked in the morning and went home to “take a bunch of meds.” Dr. Cline professed that she did not know if she injected the medications herself or whether her husband did. Dr. Cline told Ms. Moorer that by lunchtime she was “too inebriated to drive.”⁴⁹

Ms. Moorer reported that Dr. Cline told her she had previously been “given a morphine IV for migraines to get rid of pain and liked it.”⁵⁰ Dr. Cline told Ms. Moorer that she had also previously been prescribed Vicodin (a Schedule II controlled substance) for migraines, and Tramadol when she had fallen ill in Belize in December 2017.⁵¹ Dr. Cline admitted to Ms. Moorer that starting in February 2018, she diverted controlled substances from her practice for personal use.⁵² However, she told Ms. Moorer (falsely) that the bottle of Tramadol found in her vehicle was prescribed for a neighbor’s dog.

⁴⁷ Staff Exs. 16, 19.

⁴⁸ Staff Ex. 16.

⁴⁹ Staff Ex. 16.

⁵⁰ Staff Ex. 16.

⁵¹ Staff Ex. 16.

⁵² Staff Ex. 16.

Ms. Moorer reported that Dr. Cline told her that her husband was abusive and one element of the abuse was that he forced her to engage in “swinging behaviors” with “swinging groups.”⁵³ When Dr. Cline refused to engage in the behaviors, Ms. Moorer reported, Dr. Cline stated her husband was physically abusive. According to Ms. Moorer’s report, Dr. Cline said she used drugs and alcohol to cope with being forced to engage in “swinging behaviors.” Ms. Moorer asked Dr. Cline how much she drank to cope, and Dr. Cline responded that she drank five or six beers. Ms. Moorer did not ask or include in her report what drugs Dr. Cline used to cope.⁵⁴

Ms. Moorer noted that, at the time of the interview, Dr. Cline was not following any program of recovery and was not engaged in any substance use treatment, and opined that Dr. Cline was minimizing the severity of her ongoing drug usage.⁵⁵ Ms. Moorer recommended a three-day inpatient assessment to determine treatment recommendations. On July 6, 2018, Ms. Moorer opined that Dr. Cline’s practice as a veterinarian posed a risk to herself and to others based on the fact that she had not sought substance abuse treatment. At the hearing, she testified she could not speak to whether Dr. Cline currently poses a risk because she does not know whether Dr. Cline has obtained treatment since the July 2018 evaluation. She felt that Dr. Cline was extremely remorseful about the events of the arrest.

Ms. Moorer noted that Dr. Cline denied using drugs recreationally, and Ms. Moorer had no evidence that Dr. Cline used drugs recreationally, as opposed to using them to self-medicate as treatment for medical conditions. However, she agreed that using drugs while engaging in “swinging behaviors” could be considered recreational use. Ms. Moorer reported that Dr. Cline denied ever being under the influence of drugs while at work. Dr. Cline also told her that she worked out regularly and used non pharmaceutical treatments for pain.

Based on the evaluation as a whole, Ms. Moorer’s diagnostic impressions of Dr. Cline were that Dr. Cline suffered from opioid use disorder (severe), adjustment disorder, and post-

⁵³ The evidence did not clearly detail the nature of the “swinging behavior” Dr. Cline was involved in but it implied that it involved sexual interactions with persons other than her husband.

⁵⁴ Staff Ex. 16.

⁵⁵ Staff Ex. 16.

traumatic stress disorder (PTSD).⁵⁶ However, Ms. Moorer admitted she had difficulty making a diagnosis because of what she viewed as Dr. Cline's "vague and guarded" answers. Ms. Moorer attributed Dr. Cline's difficulty in responding to questions in part to Dr. Cline's PTSD resulting from her abusive relationship with her husband. She agreed that it would be rational for Dr. Cline to fear that Dr. Cline's husband might try to use the interview and evaluation in a custody battle, which could be one reason Dr. Cline was guarded in her answers.

On one of the objective diagnostic tests she administered, the Drug Abuse Screening Test (DAST), Ms. Moorer admitted that Dr. Cline scored a 4, which is not indicative of a substance use disorder.⁵⁷ Ms. Moorer also agreed that another diagnostic test, the Substance Abuse Subtle Screening Inventory (SASSI-4) test, predicted that Dr. Cline had no risk of prescription drug abuse, which contradicted the same test's finding of high probability of substance use disorder. On the three tests predicting substance use disorder, Dr. Cline scored slightly above the norm. Ms. Moorer also agreed that she did not specifically reference the Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for substance use disorder in her July 6, 2018 report, and did not rely on it for formulating her diagnostic impression. However, a diagnostic form from the DSM for substance abuse risk was attached to her report and items had been circled.

Ms. Moorer agreed that she had no evidence that Dr. Cline's use of drugs affected her relationship with her children or ability to care for her children, except during the events leading to Dr. Cline's arrest. Ms. Moorer agreed that it would be important to know whether Dr. Cline's life had been affected by substance abuse on a day other than the one she was charged with DWI, in order to determine whether she had a substance use disorder.

C. Dr. Cline's Evidence

Dr. Cline called Lisa Boyd, M.D. (a psychiatrist she began seeing after her divorce papers were filed); Erin Thornton (owner of a veterinary pharmacy); and Caren Chellgren, D.V.M. (a

⁵⁶ Staff Ex. 16.

⁵⁷ According to Ms. Moorer's report, a score of 12 or above is required for a substance abuse disorder finding. Resp. Ex. 2 at 5.

veterinarian who covered Dr. Cline's practice for her while her license is suspended).⁵⁸ In addition, Dr. Cline testified and submitted 22 exhibits, which were admitted into the record.

1. Testimony of Lisa Boyd, M.D.

Dr. Boyd is a board-certified psychiatrist. Dr. Boyd first saw Dr. Cline on June 29, 2018, for anxiety related to her divorce. She has continued to see Dr. Cline regularly since then. She prescribed Xanax to Dr. Cline for anxiety. She has also referred Dr. Cline to a therapist.

Dr. Boyd testified that the DSM is the standard published and used by the American Psychiatric Association to describe types of mental illness. She did not see any evidence that Dr. Cline met the criteria for substance use disorder under the DSM. The criteria are:

1. Using for longer periods of time than intended or using larger amounts than intended
2. Persistent desire or unsuccessful efforts to cut down or control use
3. A great deal of time is spent in activities related to substance use such as obtaining, using, and recovering
4. Cravings or strong urges to use substances – may be physical or psychological
5. Recurrent substance use resulting in failure to fulfill obligations at work, school or home
6. Continued substance use despite interpersonal problems that are caused or exacerbated by the effects of substance abuse
7. Important and meaningful social and recreational activities may be given up or reduced because of substance abuse
8. Recurrent substance use in situations that are physically hazardous
9. Continued substance use despite knowledge of persistent or recurrent physical or psychological problems that are caused or exacerbated by using substances

⁵⁸ Virginia Williams was also called by Dr. Cline and testified. However, it was not clear that her testimony was relevant to the issues in the case, and Dr. Cline did not mention her testimony in her closing argument brief. Therefore, the ALJ will not summarize her testimony here.

10. Tolerance
 - Need for increased amounts to achieve the same level of intoxication
 - Reduced effect with use of the same amount of substance
11. Withdrawal
 - Presence of withdrawal symptoms associated with the specific substance
 - Use of other substances to avoid withdrawal or manage symptoms⁵⁹

Dr. Boyd stated that the amounts of morphine Dr. Cline used to treat her migraine did not seem to be larger than intended. Furthermore, she opined that there was insufficient evidence to find that Dr. Cline met any of the other DSM criteria. She felt that the evidence showed only one incident (the DWI arrest) indicating substance abuse. She knows of no evidence supporting a concern regarding Dr. Cline's competence to practice veterinary medicine. She felt that it would be therapeutic for Dr. Cline to continue her practice.

Dr. Boyd saw Dr. Cline primarily for anxiety, not for substance abuse analysis. Dr. Cline did not tell Dr. Boyd about the diversion of drugs from Dr. Cline's practice to her own use.

2. Testimony of Erin Thornton

Ms. Thornton is the owner of Patterson Veterinary, a pharmaceutical distributor for veterinarians. She testified that Dr. Cline was a customer of Patterson. She stated that the DEA requires Patterson to report any veterinarians whose patterns of ordering controlled substances raise concern. She never felt that Dr. Cline should be reported for excessive orders of controlled substances.

⁵⁹ Resp. Ex. 2 at 32.

3. Testimony of Caren Chellgren, D.V.M.

Dr. Chellgren has covered Dr. Cline's practice since Dr. Cline's license was suspended. Dr. Chellgren keeps a DEA lock box in her truck for the controlled substances she uses to treat the animals. She uses her own DEA number to prescribe and order the drugs.

Dr. Chellgren met with Mr. Campos during his investigation. He asked her why she was working with Dr. Cline. He told her to be careful, and warned her to keep copies of her communications with Dr. Cline. She said he appeared to be trying to make her nervous and uncomfortable with assisting Dr. Cline. She stated she was willing to continue supervising Dr. Cline, whenever the clinic is open and patients are present. She has full confidence in Dr. Cline's ability to return eventually to her practice.

Dr. Chellgren's written statement was also admitted into evidence.⁶⁰ In it, she explained that she told Mr. Campos that she understood that she was present because drugs were not being properly logged. According to Dr. Chellgren, Mr. Campos told her that Dr. Cline was lying to her about the circumstances as to why she was supervising Dr. Cline's practice. He seemed suspicious because Dr. Cline was present at the clinic while he was conducting the investigation. She stated that she told Mr. Campos that Dr. Cline was not treating animals, but rather was acting as a technician and receptionist.⁶¹

Dr. Chellgren testified that she was aware that Dr. Cline's license had been suspended, although not every detail underlying the suspension. She could not remember if she told Mr. Campos that she was aware of Dr. Cline's license suspension. She understood why Mr. Campos might be concerned about Dr. Cline's presence at the facility after Dr. Cline's license had been suspended.

⁶⁰ Resp. Ex. 19.

⁶¹ Resp. Ex. 19.

4. Testimony of Dr. Cline

Dr. Cline testified that she was a soccer athlete in high school and college. She was in the top one percent of athletes in the U.S. in high school and received athletic scholarship offers. She did not drink in high school because of her athletic and academic schedule. She drank some in college, but she maintained a high B average, was accepted into veterinary school, and did well there. She began working as a veterinarian in New Mexico with her father, who is also a veterinarian. She then met her husband and moved to Conroe, Texas at her husband's insistence. When she left New Mexico, she sold her practice to her father.

Dr. Cline described her husband as having spent a lot of time in military service. He currently does private contracting work for the CIA overseas, as well as working for private companies involved in destabilizing foreign governments. He told Dr. Cline that he had killed many people, and described some of those killings to her. Dr. Cline stated he threatened to kill Dr. Cline many times.⁶² She noted that he is a heroin addict. Once, she said, she had to go to a hospital because she was very ill. She believed that her husband caused her illness. He began acting violently toward her when she was pregnant with her daughter in 2016. She stated that he has continued the violence since then both physically and emotionally.

Dr. Cline and her husband went to Belize in December 2016, to have their third child. This was the first time that he became violent to the point of leaving marks on her. The next time was when she was breastfeeding. He strangled her, tried to gouge out her eyes, and threw her to the floor. She left and went to her office with the baby. His violence continued on other occasions. She introduced photographs showing facial bruises and swelling which she testified were caused by her husband's abuse. She has since obtained a protective order and filed for a divorce. She has custody of the three children.

⁶² These statements were objected to as hearsay. Dr. Cline offered them not for the truth of the matter asserted but to show the reasons for her fear of her husband. For the limited purpose stated, she was allowed to testify as to the statements of her husband.

Other than the arrest on April 4, 2018, Dr. Cline testified that she has never been arrested or been in trouble for anything. She had never been diagnosed with mental health issues. She explained that on the date of the DWI, she went to work in the morning. She was suffering from a long-term migraine headache. She had no health insurance and was unable to afford health care. She went home around noon, and her husband was there. He was irritated that she was sick, because they had an appointment at the bank. Her husband injected her with morphine. She denied injecting herself with midazolam or morphine. She was unable to explain why there were empty hypodermics stained with fresh blood, vials of midazolam (both full and empty), and morphine found in her truck by the police at the scene of the DWI. She could also not explain the bottle of Tramadol prescribed to her deceased dog Pablo that was found in the truck. She denied that she self-administered morphine, Tramadol, and midazolam.

Dr. Cline stated that she got in the truck to go back to the office and, after she was driving for a while, she realized that she was too drowsy to drive and pulled off the road. Her tire went flat and she over-corrected. She felt guilty and ashamed of driving in that condition, and pleaded guilty to the DWI.

Dr. Cline stated that she had never used morphine from her practice to treat herself until February 2018. She admitted she diverted morphine from her practice around three or four times between February and April, 2018, to treat her migraines.

Dr. Cline stated that in addition to seeing Dr. Boyd and a therapist regularly, she had voluntarily taken urine drug tests every week since July 3, 2018.⁶³ She is also attending codependency meetings. She has reconnected with her family and friends, whom she felt her husband had purposely estranged in order to control her. She is seeing a neurologist for treatment of migraines. She is willing to continue seeing Dr. Boyd and her therapist weekly as a condition of resuming her practice, as well as to give up her DEA license and not provide or prescribe controlled substances in her practice. She was unwilling to go out of town for a three-

⁶³ Resp. Ex. 15 (Weekly Drug Test Results).

day in-patient assessment as recommended by Ms. Moorer because she did not want to leave her children. She fears her husband will try to take her children out of the country.

Dr. Cline said she did not have cravings for morphine, and has had only one migraine since the DWI incident, and that was when she had to interact with her husband. She used non-controlled medication to treat the migraine at that time. Since her separation from her husband, she has felt much less stressed.

Dr. Cline admitted she had told Ms. Moorer that she drank to cope with her shame from her participation in the “swinging” behaviors demanded by her husband but she denied telling Ms. Moorer that she used drugs for that reason. She denied having an addiction to alcohol, and she denied diverting drugs for any reason other than to treat her migraines. She stated that she did not feel comfortable with allowing Mr. Campos to photograph her body as he requested. She explained that she had bruises all over her body from being abused by her husband and she was scared of allowing Mr. Campos to photograph her arms.

Dr. Cline stated that she did not sign the entry in her drug logs for Tramadol that was prescribed to her deceased dog Pablo in January 2018. She explained that the initials in the log were her assistant’s initials. She stated she did not know why her assistant signed for a prescription of Tramadol for Dr. Cline’s dog. Dr. Cline explained she was in Belize at the time the prescription log was signed. She agreed that it was the same bottle that was found in the truck, but was unable to explain how it got in her truck. She stated that she saw the bottle in her husband’s possession after her arrest.

IV. STIPULATIONS, ARGUMENTS, AND ANALYSIS

A. Stipulations

Dr. Cline stipulated that she violated the following statutes or rules as alleged by Staff:

RULE/STATUTE	CONDUCT
Texas Occupations Code § 801.402(4)	by engaging in dishonest or illegal practices in or connected with the practice of veterinary medicine.
Board Rule 573.4	by failing to adhere to all laws related to the practice of veterinary medicine.
Board Rule 573.41	by improperly prescribing, administering, dispensing, and delivering prescription medications.
Board Rule 573.50	by failing to maintain accurate and up to date controlled substance records.
Board Rule 573.60	by treating a human.
Board Rule 573.70	by failing to report her arrest and her conviction for driving while intoxicated.
Texas Occupations Code § 801.402(6)	by engaging in practices that violated the Board's rules of professional conduct.

Therefore, the only issues remaining for analysis are whether Dr. Cline violated: (1) Texas Occupations Code § 801.402(3) by being chronically or habitually intoxicated, chemically dependent, or addicted to drugs; or (2) Board Rule 573.61, by failing to maintain minimum security for controlled substances.

B. Texas Occupations Code § 801.402(3): Chronically or Habitually Intoxicated, Chemically Dependent, or Addicted to Drugs

It is undisputed that Dr. Cline was intoxicated on the day that she was found to have been driving while intoxicated. Dr. Cline argues that the evidence does not prove that she was intoxicated on any other occasion. Staff argues that the language in the statute “chronically or habitually intoxicated” does not require proof that Dr. Cline was intoxicated on more than one occasion. Rather, according to Staff, it can be surmised that Dr. Cline was intoxicated on a habitual or chronic basis by her admission that she illegally diverted drugs for her own use on multiple occasions. The ALJ disagrees with Staff’s interpretation of the statutory language.

“Intoxication” has a specific connotation. It does not mean simply using drugs or having drugs in one’s system. According to the Texas Penal Code, it means using drugs to the point that one has lost one’s mental or physical faculties so as not to be able to perform tasks, such as driving.⁶⁴ Furthermore, “habitually” and “chronically” according to their typical usage, mean on more than one occasion.⁶⁵ There was no evidence that Dr. Cline was intoxicated on more than one occasion. Therefore, the evidence did not prove that she was chronically or habitually intoxicated.

There was also insufficient evidence that Dr. Cline is addicted to or chemically dependent on drugs. Dr. Cline admitted to diverting morphine from her practice for her own use on several occasions starting in February 2018. Ms. Moorer diagnosed Dr. Cline with a “high probability” of a drug use disorder.⁶⁶ However, Ms. Moorer admitted she could not make a definitive diagnosis of drug addiction or dependence without a more comprehensive evaluation. Her diagnosis was based on Dr. Cline’s answers to questions, which she stated were inconclusive, not

⁶⁴ Tex. Penal Code § 49.01(2) (“Intoxicated means: (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; . . .”).

⁶⁵ A “habit” is defined as “an acquired behavior pattern regularly followed until it has become almost involuntary.” “Chronic” is defined as “constant; habitual; inveterate;” “continuing a long time or recurring frequently;” and “having long had a disease, habit, weakness, or the like.” www.dictionary.com.

⁶⁶ Staff Ex. 16.

on any objective observation of Dr. Cline's behavior or any medical evaluation. Her report did not address the criteria for substance use disorder required under the DSM. In addition, the DSM itself states that "A substance use disorder does not imply addiction."⁶⁷ Mr. Campos's testimony regarding "track marks" was speculative and unpersuasive, as he had no demonstrated medical expertise to diagnose addiction.

Furthermore, Dr. Cline submitted proof that she had voluntarily undergone regular drug-testing since the DWI offense and all of her tests had been clean. This evidence supported Dr. Cline's argument that she is not currently addicted to or dependent on drugs because it counteracts several elements of substance use disorder under the DSM:

- Persistent desire or unsuccessful efforts to cut down or control use
- Continued substance use despite interpersonal problems that are caused or exacerbated by the effects of substance abuse
- Continued substance use despite knowledge of persistent or recurrent physical or psychological problems that are caused or exacerbated by using substances
- Withdrawal symptoms

The evidence was insufficient to prove a violation of Texas Occupations Code § 801.402(3).

C. Rule 573.61: Failing to Maintain Minimum Security for Controlled Substances

The evidence established that Dr. Cline failed to maintain minimum security for controlled substances. Rule 537.61(a) states:

Veterinarians shall adhere to the following to ensure security of controlled substances:

- (1) Establish adequate security to prevent unauthorized access to controlled substances.

⁶⁷ Resp. Ex. 2 at 32.

- (2) Establish adequate security to prevent the diversion of controlled substances.
- (3) During the course of business activities, do not allow any individual access to controlled substances storage areas except those authorized agents required for efficient operations.
- (4) Controlled substances listed in Schedules I, II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet or security cabinet.

The evidence established that Dr. Cline was found with multiple controlled substances unsecured in her vehicle. Furthermore, she testified that she was not aware how some of the drugs came to be located in her vehicle. Although she claimed that an assistant signed the log for Tramadol which was prescribed to Dr. Cline's deceased dog, not her, the Tramadol prescribed to Dr. Cline's dog Pablo was later found in Dr. Cline's possession. She stated that she had allowed her husband, an unauthorized individual, access to controlled drugs from her practice for the purpose of injecting her. It was undisputed that some of the controlled drugs which she diverted for her personal use were never placed in a secure place or under an inventory system.

The evidence established that Dr. Cline violated Rule 573.61(a).

V. RECOMMENDED SANCTION

Staff argues that Dr. Cline's violations are Class A violations, and seeks a formal reprimand; suspension of Dr. Cline's license for five years, with said suspension probated after Dr. Cline is declared safe to practice by the Board's Peer Assistance Program (PAP) evaluator; a five-year contract between Dr. Cline and PAP, with adherence to all recommendations of PAP; and assessment of a \$2,500 administrative penalty.

In addition, Staff urges that for the first two years of probation, Dr. Cline's practice should be limited to require direct supervision by a licensed veterinarian approved in advance and in writing by the Board's Executive Director. For the first year of Dr. Cline's probation, Staff would require the supervising veterinarian to submit quarterly reports to the Board

certifying compliance with the order. According to Staff, these measures are necessary to ensure that Dr. Cline's practice of veterinary medicine does not continue to pose a threat to the public welfare.

Dr. Cline pointed out that, because she practiced in a small town with no other veterinarians, requiring that she be directly supervised by another veterinarian would result in her having to give up her practice and move to another town to work in another veterinarian's clinic. In addition, she objected to being required to contract with PAP and argued that her counseling sessions with Dr. Boyd were sufficient to provide reassurance to the Board that she was not addicted to drugs. She agreed to give up her DEA license and to not prescribe or provide controlled substances in her practice for a period of time. She contends that she does not pose a risk under those circumstances and should be allowed to practice under a probated suspension of her license.

Each of the violations of Board Rules found in this case (Rules 573.4, .41, .50, .60, .61, and .70) are violations of the Rules of Professional Conduct. Therefore, they can be considered Class A, B, or C violations, depending on the seriousness of the conduct, the potential harm to the public safety, prior misconduct, and other concurrent violations.⁶⁸ Violations of the Rules of Professional Conduct that present imminent peril to the public will be considered Class A.⁶⁹

In this case, Dr. Cline did not have prior violations, which as Dr. Cline argues, could make her violations Class C. However, the number and seriousness of her violations, which involved criminal conduct and misuse of controlled substances, were sufficient to elevate them to Class B. Furthermore, the nature of the violations posed an imminent threat to the public, which elevated them to Class A. Specifically, she drove while intoxicated by drugs that she diverted from her practice (Texas Occupations Code § 801.402(4)); she failed to maintain the security of the controlled substances which she kept in her practice (Board Rule 573.50); and she used her license to obtain drugs to treat herself, without a license or training to do so (Board Rules 573.41

⁶⁸ 22 Tex. Admin. Code § 575.25.

⁶⁹ 22 Tex. Admin. Code § 575.25(a).

and .60). Her violation of Board Rules 573.4 and .70 would not, standing alone, be considered Class A, but when considered in conjunction with her other violations, should be treated as such. Therefore, her violations are appropriately categorized as Class A violations as defined under Board Rule 575.25.

In determining the exact sanction or sanctions to be imposed, the Board must consider the seriousness of the violation, the hazard or potential hazard created, the economic harm to property or the environment, the history of previous violations, what is necessary to deter future violations, and any other matters that justice may require.⁷⁰

The evidence did not prove that Dr. Cline's practice or any of her patients were affected by her violations. No evidence of professional incompetence was advanced. Furthermore, she has not had any previous disciplinary actions against her. There was also insufficient proof that she was addicted to controlled substances. These factors were in her favor.

However, Dr. Cline's repeated diversion of drugs from her practice; her improper use of controlled substances to treat herself; and her driving while intoxicated posed serious hazards and militate against her having future access to those drugs in her practice. Furthermore, Dr. Cline demonstrated a lack of honesty in her testimony. Even when faced with the evidence that midazolam was in her vehicle and that a blood test indicated the presence of the drug in her system, Dr. Cline refused to acknowledge that she had voluntarily taken the midazolam. Her protestations that she did not know how the vials of drugs and syringes—some of which were empty and stained with blood and some of which were in her seat, in her purse, and in the side pocket of the vehicle—entered her vehicle were not plausible. Furthermore, her testimony that she had no knowledge of the bottle of Tramadol found in her car and had not obtained it from her practice was not credible.

The ALJ believes that the record supports the proposed formal reprimand and the \$2,500 fine. Furthermore, although the evidence did not prove that Dr. Cline was addicted to or

⁷⁰ 22 Tex. Admin. Code § 575.25(b)(2).

dependent on drugs, her conduct in flagrantly breaching the ethical and professional norms regarding controlled substances showed a lack of concern for and understanding of her professional responsibility. This evidence justifies disciplinary action against her license. However, revocation or enforced suspension of her license is not necessary to ensure compliance under the circumstances, as Dr. Cline has voluntarily undergone drug testing, and she no longer has a DEA license which provided her access to controlled substances. Therefore, the appropriate disciplinary action to deter future misconduct is the probated suspension of her license; maintaining the revocation of her DEA license and complete suspension of her authorization to prescribe or obtain controlled substances for the probation period; requiring her records to be submitted to a Board-approved veterinarian for review and regular reporting to the Board for the probation period; and requiring relevant professional education on the prescribing, inventorying, and securing of controlled substances by a veterinarian.

Staff argues that Dr. Cline's practice should be directly supervised by another veterinarian while she is under probation. However, the ALJ was unable to find in the enabling statutes or the Board rules any authority for the Board to take such disciplinary action against a licensee. Rather, the enabling statutes authorize the Board to impose on a licensee with a probated license the following restrictions:

- (1) report regularly to the [B]oard on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the [B]oard; or
- (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the [B]oard in those areas that are the basis of the probation.⁷¹

Therefore, the ALJ believes that a five-year probated suspension of Dr. Cline's license, during which her authority to prescribe or obtain controlled substances in her practice is revoked for three years; requiring submission of her records to a Board-approved veterinarian who will make quarterly reports to the Board, particularly in regard to her controlled substances logs, for

⁷¹ Tex. Occ. Code § 801.401(c).

the entire five years; and requiring relevant professional education, is appropriate and authorized in this case.

Staff also argues that Dr. Cline should be required to enter into a contract with the PAP. The Board may order a veterinarian “based on a finding that the veterinarian is impaired by chemical dependency or mental illness to submit to care, counseling, or treatment through the peer assistance program.”⁷² In this case, as discussed above, the evidence does not support a finding that Dr. Cline is impaired by chemical dependency or mental illness. Therefore, the evidence does not support the Board’s authority under the statute to order Dr. Cline’s participation in PAP.

VI. FINDINGS OF FACT

1. Kerry Cline, D.V.M. is licensed as a veterinarian by the Texas Board of Veterinary Medical Examiners (Board), and holds License No. 12140, issued on April 9, 2012.
2. On June 29, 2018, the Executive Committee of the Board determined that Dr. Cline’s continued practice of veterinary medicine constituted a continuing or imminent threat to the public and issued an Order suspending Dr. Cline’s license.
3. On July 10, 2018, a hearing was held before the Executive Committee of the Board to decide if the suspension of Dr. Cline’s license should remain in force. The Executive Committee of the Board determined that Dr. Cline’s license should remain suspended and that disciplinary proceedings should be initiated against Dr. Cline.
4. On August 1, 2018, Dr. Cline agreed to waive the 60-day deadline by which a final hearing must be held.
5. On August 15, 2018, the Board’s staff (Staff) issued a Notice of Hearing to Dr. Cline.
6. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the State Office of Administrative Hearings (SOAH).

⁷² Tex. Occ. Code § 801.157(b).

7. The hearing on the merits was held on September 11, 2018, before Administrative Law Judge (ALJ) Joanne Summerhays at the SOAH hearing facilities at 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Staff Attorney Stephen White. Dr. Cline appeared and was represented by attorney Brian Bishop. The record closed on November 20, 2018, to allow the parties an opportunity to present written closing arguments and engage in settlement negotiations.
8. At all times relevant to this case, Dr. Cline owned Dr. Kerry's PetVet in Conroe, Texas.
9. On April 4, 2018, Dr. Cline was found by two police officers at the scene of a one-vehicle accident involving her vehicle. She was arrested for driving while intoxicated.
10. The officers found two empty syringes with blood-tinged needles; a full and an empty a vial of injectable midazolam (a controlled substance), one of which Dr. Cline had been sitting on; five syringes that appeared to be used; an empty vial of morphine (a controlled substance); and ten small full bottles containing midazolam. Additionally, the officers found a bottle of Tramadol tablets (a controlled substance) that had been prescribed to Dr. Cline's dog Pablo.
11. Dr. Cline's dog Pablo had been deceased for a period of time at the time of the arrest.
12. A blood test following the arrest showed both morphine and midazolam in Dr. Cline's system.
13. Dr. Cline pleaded guilty to a Class B misdemeanor of driving while intoxicated on April 18, 2018. She was sentenced to serve three days in county jail and to pay a fine of \$1,200.
14. Dr. Cline did not report her conviction to the Board.
15. A Board investigator conducted an inspection of Dr. Cline's facility on June 29, 2018.
16. Dr. Cline did not have a controlled substance log for injectable morphine, despite invoices showing Dr. Cline had purchased five 20 milliliter (ml) single dose vials and five 10 ml single dose vials of injectable morphine on January 9, 2018, using her Federal Drug Enforcement Agency (DEA) license for her veterinary practice.
17. On several occasions from February through April 2018, Dr. Cline used the morphine she had purchased for her practice on January 9, 2018, to treat herself for migraines.
18. Dr. Cline's controlled substance log for Tramadol included an entry showing Dr. Cline had dispensed Tramadol to her dog Pablo in January 2018. The entry was signed by Dr. Cline's assistant.
19. Following the inspection June 29, 2018, Dr. Cline voluntarily surrendered her DEA registration and all controlled substances on hand.

20. On July 6, 2018, Dr. Cline submitted to a substance abuse and mental health evaluation with Andrea Moorner, LCSW, LCDC, monitored by Professional Recovery Network (PRN), a private contractor with the Board.
21. Based on an interview with Dr. Cline, records received from the Board, and diagnostic questionnaires filled out by Dr. Cline, Ms. Moorner's diagnostic impressions of Dr. Cline were that there was a high probability that Dr. Cline suffered from opioid use disorder (severe), adjustment disorder, and post-traumatic stress disorder (PTSD). However, she was not able to give a definitive diagnosis without further evaluation. She recommended a three-day in-patient evaluation at an out-of-state facility.
22. As set out in the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is the standard published by the American Psychiatric Association to define types of mental illness, substance use disorder does not imply addiction.
23. Dr. Cline first saw Lisa Boyd, M.D., a board-certified psychiatrist, on June 29, 2018, for anxiety and PTSD related to her husband. She has continued to see Dr. Boyd regularly since then. Dr. Boyd prescribed Xanax to Dr. Cline to treat her anxiety and PTSD. She has also referred Dr. Cline to a therapist.
24. Dr. Boyd did not find that Dr. Cline met the criteria for substance use disorder, as set out in the DSM.
25. Dr. Cline lacked credibility when she denied that she self-administered the morphine, Tramadol, and midazolam found in her truck at the time of her arrest.
26. At the time of the hearing, Dr. Cline had voluntarily taken drug tests every week since July 3, 2018, and they were all negative for controlled substances.
27. Dr. Cline drank alcohol to cope with her shame for participating in certain sexual activities in which her husband forced her to participate.
28. Dr. Cline was diagnosed with PTSD resulting from her husband's physical and emotional abuse of her.
29. Dr. Cline is currently separated from her husband and has filed for divorce and obtained a restraining order against him.
30. Dr. Cline's veterinary practice and her patients were not adversely affected by her violations.
31. Dr. Cline has not had any previous disciplinary actions.
32. Dr. Cline's diversion of drugs from her practice, her improper use of controlled substances to treat herself, and her driving while intoxicated posed serious hazards which were enabled by her access to controlled substances in her practice.

33. Dr. Cline refused to acknowledge that she had voluntarily taken the midazolam found in her vehicle, although a blood test indicated the presence of the drug in her system.
34. Dr. Cline's protestations that she did not know how the vials of drugs and syringes found in her vehicle on April 4, 2018, entered her vehicle were not plausible.
35. The evidence was insufficient to show that Dr. Cline was intoxicated on more than one occasion.
36. The evidence was insufficient to show that Dr. Cline is addicted to or dependent on drugs.
37. Dr. Cline had allowed her husband, an unauthorized individual, access to controlled drugs from her practice for the purpose of injecting her with the drugs on April 4, 2018.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction and authority to take disciplinary action against a licensee who violates the Board's Rules of Professional Conduct. Tex. Occ. Code §§ 801.401, .402.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code Ch. 2003; Tex. Occ. Code § 801.407.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proving the case by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. Dr. Cline violated 22 Texas Administrative Code § 573.4 by failing to adhere to all laws related to the practice of veterinary medicine.
6. Dr. Cline violated 22 Texas Administrative Code § 573.41 by improperly prescribing, administering, dispensing, and delivering prescription medications.
7. Dr. Cline violated 22 Texas Administrative Code § 573.50 by failing to maintain accurate and up-to-date controlled substance records.
8. Dr. Cline violated 22 Texas Administrative Code § 573.60 by treating a human.
9. Dr. Cline violated 22 Texas Administrative Code § 573.61 by failing to maintain minimum security for controlled substances.

10. Dr. Cline violated 22 Texas Administrative Code § 573.70 by failing to report her arrest and her conviction for driving while intoxicated to the Board.
11. Dr. Cline violated Texas Occupations Code § 801.402(4) by engaging in dishonest or illegal practices in or connected with the practice of veterinary medicine.
12. Dr. Cline violated Texas Occupations Code § 801.402(6) by engaging in practices that violated the Board's Rules of Professional Conduct.
13. Under the Board's schedule of recommended sanctions, Dr. Cline's violations of the Rules of Professional Conduct are properly characterized as Class A violations because they presented imminent peril to the public. 22 Tex. Admin. Code § 575.25.
14. Among the Board's disciplinary powers is the authority to revoke or suspend a license, reprimand a license holder, place a suspended license holder on probation, impose administrative penalties, and require license holders to participate in continuing education programs. Tex. Occ. Code §§ 801.401, .451.
15. The Board may require a license holder whose license suspension is probated to: (1) report regularly to the Board on matters that are the basis of the probation; (2) limit practice to the areas prescribed by the Board; or (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation. Tex. Occ. Code § 801.401(c).
16. For a Class A violation, the Board is authorized to impose a maximum penalty of a revocation of Dr. Cline's license; a penalty not exceeding \$5,000 for each violation per day; continuing education in a specified field relevant to the violation; quarterly reporting certifying compliance with Board orders; and/or passing relevant professional licensing exams. 22 Tex. Admin. Code § 575.25(a)(3).
17. In assessing sanctions and/or penalties, the Board shall consider: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require. 22 Tex. Admin. Code § 575.25(a)(2).

VIII. RECOMMENDATION

The ALJ recommends that the Board formally reprimand Dr. Cline and impose a \$2,500 administrative penalty and a five-year probated suspension of Dr. Cline's license, during which (1) her authority to prescribe or obtain controlled substances through her practice is removed for the first three years; (2) her veterinary records are required to be submitted to a Board-approved

veterinarian for periodic reports to the Board; and (3) relevant professional education is completed.

SIGNED January 8, 2019.

A handwritten signature in black ink, appearing to read 'Joanne Summerhays', is written over a horizontal line. The signature is stylized with a large loop at the top.

**JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**