

DOCKET NO. 2015-178

IN THE MATTER OF § TEXAS BOARD OF
 THE LICENSE OF § VETERINARY
 KATHIE DIGILIO, D.V.M. § MEDICAL EXAMINERS

Received

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Texas State Board of
Veterinary Medical Examiners**AGREED ORDER**

On this the 26 day of January 2016 came to be considered by the Texas Board of Veterinary Medical Examiners (Board) the matter of the license of KATHIE DIGILIO, D.V.M. (Respondent). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.29, an informal conference was held on August 27, 2015. Respondent did attend the informal conference and was represented by counsel, Mr. Keith Slade. The Board was represented at the conference by the Board's Enforcement Committee.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a formal adjudicative hearing and thereby informally dispose of the issues without a formal adjudication. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving an adjudicative hearing, Respondent acknowledges her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

Upon the recommendation of the Enforcement Committee and with Respondent's consent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order as set forth below.

Findings of Fact

1. Respondent, KATHIE DIGILIO, D.V.M. of Spring, Texas, holds Texas veterinary license 4103.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 (Act). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov't Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners (Board Rules) (22 Tex. Admin. Code, Chapter 575).
3. On August 25, 2015, Gayle Clarkson presented a recently-captured, feral, female cat (F1) to the Panda Wellness Center (PWC) for a spay procedure. Respondent performed the procedure.

4. Respondent sedated F1 prior to examination. Respondent noted in the patient records that F1 had fleas and a scruffy coat, was icteric, and had moderate stomatitis.
5. During the spay procedure, Respondent observed that F1's uterus was mildly distended, flaccid, and discolored. Respondent directed an assistant to contact Ms. Clarkson and request permission for feline leukemia and feline immune deficiency testing. Ms. Clarkson authorized the testing. The feline leukemia and feline immune deficiency test were negative, but this was not communicated to Ms. Clarkson until after the spay procedure.
6. Respondent asserts that she continued the procedure as she felt that F1 would survive if provided with extensive care by its owner post-surgery, including hand feeding. F1 was a feral cat that was unknown to the owner at the time. Feral cats generally do not allow humans to handle them.
7. Ms. Clarkson picked up F1 after the spay procedure was completed. On August 26, 2015, Ms. Clarkson observed that F1 was not eating well and did not seem to be recovering properly.
8. F1's condition had not improved by August 28, 2015. Ms. Clarkson attempted to contact PWC by telephone about F1's condition, but her calls were not answered.
9. Later that day, Ms. Clarkson took F1 to Michelle Brewer Withrow, D.V.M., at the Long Meadow Veterinary Clinic. Dr. Withrow left a voicemail for PWC stating that F1 was not doing well after surgery, and requesting F1's patient records. Neither Respondent nor anyone else from PWC returned Dr. Withrow's calls.
10. Dr. Withrow performed an exam and found that F1 had moderate to severe dental disease, two abscessed teeth, bloody saliva, and purulent drainage. After discussing treatment options with Dr. Withrow, Ms. Clarkson decided to euthanize F1. Such dental issues reflect a poor overall health condition.
11. Respondent's patient records do not have her name as the veterinarian that performed the treatment described in the records and included an incorrect reference to the use of Doxycycline, which was not actually used for F1.
12. Respondent has received two prior Agreed Orders with the Board. In 2010, Respondent violated Board rule 573.43, MISUSE OF DEA NARCOTICS REGISTRATION, by failing to have a current controlled substances registration with the Texas Department of Public Safety, and section 801.402(6) of the Veterinary Licensing Act, providing that a licensee shall not violate Board rules. Respondent was assessed an administrative penalty.
13. In 2013, Respondent violated Board rule 573.74, DUTY TO COOPERATE WITH THE BOARD, by failing to timely respond to the Board, Board rule 573.75, NOTIFICATION OF LICENSEE ADDRESSES, by failing to notify the Board that her address had changed, and section

801.402(6) of the Veterinary Licensing Act, providing that a licensee shall not violate Board rules. Respondent received a formal reprimand and was assessed a monetary administrative penalty.

Conclusions of Law

1. Respondent is required to comply with the provisions of the Veterinary Licensing Act, Chapter 801, Texas Occupations Code, and with the Board's Rules.

2. Based on the above Findings of Fact, Respondent violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board's Rules of Professional Conduct, by performing surgery on an animal in such poor condition and on an animal that could not be cared for properly after surgery due to being feral, by failing to discuss euthanasia with the owner, and by failing to follow up with the owner when she questioned F1's reaction to the surgery; and, thus, failing to exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities. In accordance with Rule 573.11 RESPONSIBILITY FOR UNLICENSED EMPLOYEES, Respondent is responsible for any acts a non-veterinarian employee commits within the scope of the employee's employment.

3. Based on the above Findings of Fact, Respondent violated Rule 573.52, VETERINARY PATIENT RECORDKEEPING, of the Board's Rules of Professional Conduct, by failing to include the identity of the veterinarian who practiced veterinary medicine on the animal and by including the incorrect drug prescribed, administered, and dispensed.

4. Based on the above Findings of Fact and Conclusions of Law, Respondent has violated Sections 801.402 (6) of the Veterinary Licensing Act, Texas Occupations Code, and is subject to disciplinary action by the Board:

801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or to disciplinary action under Section 801.401 if the person:...

(6) engages in practices or conduct that violates the board's rules of professional conduct...

5. Based on the above Conclusions of Law, Respondent is subject to disciplinary action under Section 801.401 of the Veterinary Licensing Act, Texas Occupations Code:

801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the Board may: (a)

- (1) refuse to examine an applicant or to issue or renew a license;
- (2) revoke or suspend a license;
- (3) place on probation a license holder or person whose license has been suspended;
- (4) reprimand a license holder; or
- (5) impose an administrative penalty.

.... (d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program.

6. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board orders that Respondent receive a FORMAL REPRIMAND.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of ONE THOUSAND DOLLARS (\$1000.00). If Respondent fails to pay the administrative penalty within 45 days of the date that the Board approves this Agreed Order, Respondent's license may be suspended until the penalty is paid, and any payment by the Respondent to the Board to renew her license will be applied toward the payment of any administrative fee owed to the Board, and further enforcement action may be taken.

In addition, the Board ORDERS that Respondent complete SIX (6) hours of continuing education with three in recordkeeping and three in critical care, in addition to the seventeen required annually for renewal of Respondent's license to practice veterinary medicine, within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received within thirty (30) days after one year of the date the Board approves this Order. If Respondent fails to provide documentation of completion within forty-five (45) days of one year of the date the Board approves this Order, Respondent's license may be suspended until the continuing education penalty is completed and documentation is received by the Board.

The Board further ORDERS that:

- 1. Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, and the laws of the State of Texas and the United States.

2. Respondent shall cooperate with the Board's attorneys, investigators, compliance officers and other employees and agents investigating Respondent's compliance with this Agreed Order.

3. Failure by Respondent to comply with the terms of this Agreed Order or with any other provisions of the Licensing Act or the Board Rules, may result in further disciplinary action.

Respondent, by signing this Agreed Order, acknowledges her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that she will satisfactorily comply with the mandates of the Agreed Order in a timely manner or be subject to appropriate disciplinary action by the Board.

Respondent, by signing this Agreed Order, waives her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she had the right to be represented by legal counsel in this matter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

The effective date of this Agreed Order shall be the date it is adopted by the Board.

I, KATHIE DIGILIO, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THAT THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

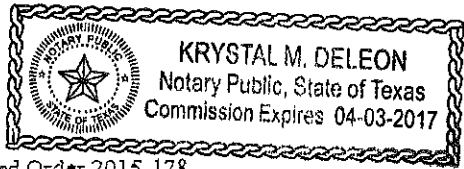
Kathie Digilio DVM
KATHIE DIGILIO, D.V.M.

10/5/2015
DATE

STATE OF TEXAS §
COUNTY OF Harris §

BEFORE ME, on this day, personally appeared KATHIE DIGILIO, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that she executed the same for the purposes stated therein.

Given under the hand and seal of office this 5th day of October, 2015.



K. DeLeon
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL
EXAMINERS on this the 26 January, 2016

R. Lenarduzzi, DVM

~~Bud E. Alldredge, Jr., DVM, President~~

Roland Lenarduzzi, DVM
Interim Board President