DOCKET NO. 2004-05

IN THE MATTER OF § TEXAS STATE BOARD OF
THE LICENSE OF § VETERINARY MEDICAL EXAMINERS
MARCIA L. DUBOIS, D.V.M. §

AGREED ORDER

On this the 19th day of February, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Marcia L. DuBois, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on December 5, 2003. Respondent appeared with counsel. 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. On September 30, 2002, Michael and Kathy Chase presented their dog "Misty" to Marcia DuBois, D.V.M., Little York Veterinary Clinic, Houston, Texas for a broken rear leg. Dr. DuBois recommended that a pin be placed in the dog's leg to repair the fracture. Dr. DuBois performed the surgery on October 1, 2002.

2. The dog's recovery from surgery initially went well. On October 4th, Dr. DuBois told the Chases that she wanted to keep the dog over the weekend because of some swelling around the surgery site. Dr. DuBois reported that the pin had become loose and had to be re-seated. On October 9th, "Misty" appeared to be recovering well, but on October 10th, Dr. DuBois reported that the dog was less alert and not interested in standing. On October 9th, Michael Chase sent an e-mail to Dr. DuBois indicating that they were pleased with the care the dog was receiving. The Chases did not visit the dog from October 11th through the 13th.

3. On October 11th, patient records reflect that the pin area appeared irritated and the dog had to be force fed. On October 12th, the dog's condition began to decline as infection became apparent. The patient record for the 13th (a Sunday) indicated that "Misty" was developing bed sores and
the leg was beginning to swell. It is not apparent who placed the entry of October 13th into the patient record or whether it was accurate since Dr. DuBois was not in the clinic that day and did not check on the dog.

4. On October 14th, the Chases went to pick up the dog. Upon arrival at the clinic, the Chases learned from Dr. DuBois that "Misty" had developed a severe infection and had become dehydrated. The dog had two large open wounds on her left leg (bed sores) and the pin placement incision had become an open hole with oozing pus.

5. From October 14th through October 18th, the Chases visited "Misty" every day. During this period Dr. DuBois told them that the dog was septic and not responding to conventional treatment. Other treatments, such as "ozone therapy," were tried, without success. The dog died on October 18, 2002.

6. The patient records, including the printed and handwritten notes, are confusing, contradictory and incomplete. The entries for the surgery date do not contain the weight and temperature of the patient. Dr. DuBois stated that she administered antibiotics pre-surgery, but it is not noted in the patient records. Dr. DuBois stated that she administered acupuncture to the patient, but it is not noted in the patient records. An entry is not included in the handwritten notes for October 13th (a Sunday), but an entry for that date is included in the printed notes although Dr. DuBois was not in the clinic on Sunday. The printed entry for October 12th and 13th indicates that Dr. DuBois visited with Ms. Chase on those days, but Dr. DuBois and the Chases affirmed that the Chases were not informed of the dog's condition from October 11th through October 13th. The handwritten entry for October 12th indicates "no stool," but the printed entry for that date indicates "passing small amounts of very dark stool."

7. The following acts and/or failures to act by Dr. DuBois do not represent the same degree of humane care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical community in Houston, Texas or similar communities:

   a. the failure to examine the sick patient on October 13th;

   b. the failure to inform the clients of the patient’s deteriorating condition from October 11th through October 13th.

8. Dr. DuBois performed acupuncture on the patient and on October 16/17, 2002, administered Yunnan pai yao, a herb, to the patient, without obtaining a written consent form from the client.

**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 Finding of Fact 7, Respondent has violated Rule 573.22 PROFESSIONAL
STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct,
which requires veterinarians to exercise the same degree of humane care, skill, and diligence in
treating patients as is 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.

3. Based on Finding of Fact 6, Respondent has violated Rule 573.52 PATIENT RECORD
KEEPING, of the Board's Rules of Professional Conduct.

4. Based on Finding of Fact 8, Respondent has violated Rules 573.14 ALTERNATE
THERAPIES–ACUPUNCTURE, and 573.15 ALTERNATE THERAPIES–HOLISTIC
MEDICINE, of the Board's Rules of Professional Conduct, which require that a veterinarian
obtain a signed statement from a patient’s owner acknowledging that acupuncture and holistic
medicine are alternate therapies in veterinary medicine and approving their use in the treatment
of the patient.

5. Based on Findings of Fact 3, 6, 7, and 8 and Conclusions of Law 1 through 4, Respondent
has violated Section 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.

6. Based on Conclusions of Law 1 through 5, 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:

(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 a civil penalty.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Marcia
L. DuBois, D.V.M., be OFFICIALLY REPRIMANDED.
The Board further ORDERS that Respondent pay a CIVIL PENALTY of FIVE HUNDRED DOLLARS ($500.00), payable within 45 days of the date of this Order. If Respondent fails to pay the civil penalty within 45 days of the date of this Order, Respondent’s license shall be suspended until the civil penalty is paid.

The Board further ORDERS that Respondent take and pass the Board’s jurisprudence examination within 45 days of the date of this Order. If Respondent fails to take and pass the jurisprudence examination within 45 days of the date of this Order, Respondent’s license shall be suspended until Respondent does take and pass the examination. Respondent may not re-take the examination any more frequently than 10 working days from the date of her last sitting for the examination. Should Respondent engage in the practice of veterinary medicine when under suspension, she will be subject to immediate disciplinary action.

The Board further ORDERS that, within 45 days of the date of this Order, Respondent submit to the Board for review and approval alternate therapy consent forms that comply with the requirements of Board Rules 573.14, 573.15, and, if applicable to Respondent’s practice, 573.16.

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 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 herein 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 is 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. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT’S RIGHTS UNDER STATUTE OR UNDER THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE
OTHERWISE AGREED TO HEREIN. 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, MARCIA L. DUBOIS, 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.

Marcia L. DuBois, D.V.M.

11/28/03
Date

STATE OF TEXAS
COUNTY OF

BEFORE ME, on this day, personally appeared MARCIA L. DUBOIS, 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 28th day of January, 2004

Leticia Cadena
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19th day of February, 2004.

Dee A. Pederson, D.V.M., President