

DOCKET NO. 2016-013

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
NEAL ECKERT, D.V.M. § 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 Neal Eckert, D.V.M. ("Respondent"). Pursuant to Section 801.408 of the Texas Occupations Code, and Board Rule 575.29, an informal conference was held on December 7, 2015. Respondent did attend the informal conference. 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 his understanding of the alleged violations and the adequacy and sufficiency of the notice provided to him.

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, Neal Eckert, D.V.M. of Fredericksburg, Texas, holds Texas veterinary license 11702.
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 February 16, 2015, Kirk Gartman presented his cat, Mimosa, to Neal Eckert, D.V.M., at the Fredericksburg Veterinary Center in Fredericksburg, Texas. Dr. Eckert performed spay and front declaw procedures. Following the declaw procedure, Dr. Eckert wrapped Mimosa's paws

and legs, wrapping the excess bandage above Mimosa's elbow. Mimosa was picked up on February 17, 2015.

4. On February 19, 2015, Mimosa was presented to Dr. Eckert for swelling in the front legs. Dr. Eckert administered subcutaneous fluids and an antibiotic injection.

5. On February 20, 2015, Mr. Gartman presented Mimosa to Dr. Eckert again for swelling in the front legs. Dr. Eckert administered subcutaneous fluids again.

6. On February 23, 2015, Mr. Gartman presented Mimosa to Juliette Carroll, D.V.M., at Pedernales Veterinary Center in Fredericksburg, Texas. Dr. Carroll consulted with John Metzger, D.V.M., and Patrick O'Neil, D.V.M., regarding Mimosa's condition. Dr. Carroll observed necrosis of the front legs and could not elicit sensation from either limb. Mr. Gartman elected to euthanize Mimosa.

7. Dr. Eckert's patient records did not include any contemporaneous documentation of the surgery performed on February 16, 2015, nor did they include contemporaneous documentation of the treatment provided on February 20, 2015. However, an addendum including some of this information was added to the patient records on February 24, 2015.

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 has violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board's Rules of Professional Conduct, by wrapping Mimosa's bandages above the elbow 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.

3. Based on the above Findings of Fact, Respondent has violated Rule 573.52(a)(10), VETERINARIAN PATIENT RECORDKEEPING, of the Board's Rules of Professional Conduct, by failing to retain contemporaneous records of treatment provided.

4. Based on Findings of Fact 1 through 7 and Conclusions of Law 1 through 3, 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 practice or conduct that violates the board's rules of professional conduct.

5. Based on Conclusions of Law 1 through 4, 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 required to provide restitution to the client as set out in Section 801.408(e), INFORMAL PROCEEDINGS.

MITIGATING FACTORS

In determining the appropriate sanctions in this matter, the Board considered the following mitigating factors:

1. Respondent has no prior disciplinary history.
2. The violations described above represent isolated violations.
3. Respondent fully cooperated with Board investigators.

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 an INFORMAL REPRIMAND.

The Board further ORDERS that Respondent pay restitution to Mr. Gartman for the amount of the declaw procedure and the follow-up exams on February 19 and 20, 2015. Proof of restitution and proof of amounts charged for the declaw procedure and follow-up exams SHALL be provided to the Board no later than forty-five (45) days from the effective date of this Order.

In addition, the Board ORDERS that Respondent complete THREE (3) hours of continuing education in the area of Recordkeeping, 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 thirty (30) 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, the laws of the State of Texas, and the laws of 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 his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that he 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 his right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that he 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, NEAL ECKERT, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT 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.

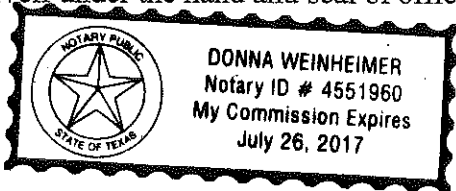
[Signature]
Neal Eckert, D.V.M.

1/6/2016
DATE

STATE OF TEXAS §
COUNTY OF Gillespie §

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

Given under the hand and seal of office this 6 day of January, 2016



[Signature]
Notary Public

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

[Signature]
Roland Lenarduzzi, DVM
Interim, Board President