

IN THE MATTER OF THE LICENSE OF § TEXAS STATE BOARD OF
LU ANN ERVIN, D.V.M. §
§ VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the _____ day of _____, 1997, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board"), the matter of the license of LU ANN ERVIN, DVM, ("Respondent" or "Dr. Ervin"). Pursuant to the Veterinary Licensing Act ("Act") § 18F and Board Rules of Disciplinary Procedure 575.27, on May 30, 1997, Respondent appeared in person, at an Informal Conference in response to a letter of invitation from the Board. The Board was represented at the Informal Conference by the Enforcement Committee.


Respondent wishes to waive a formal adjudicative hearing and to enter into this Agreed Order. In waiving an adjudicative hearing Respondent acknowledges understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

Upon 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. Lu Ann Ervin, DVM, is a veterinarian licensed by the Board to practice veterinary medicine in the state of Texas under license number 5474, 1996 renewal certificate number 3224. Respondent is not subject to prior disciplinary action by the Board.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent has received all notice which may be required by law and by the Board Rules. All jurisdictional requirements have been satisfied.

3. On October 28, 1995, a seven month old black chow "Smokey", believed to be a stray, was taken to the Animal Emergency Clinic, 115 South 18th, Waco, Texas ~~for treatment for~~ ^{for identification}. ~~closed and watery eyes.~~ ^{Although the animal} Dr. Lu Ann Ervin examined the dog. ~~The dog was not a stray and~~ ^{had no rabies tag or identification, he} belonged to Ms. Rachel Brand. 

4. No record exists at the clinic of the dog ever being admitted. Respondent told Ms. Brand that she had a contract with the city of Waco to euthanize injured and sick animals. The contract did not specify the length of time the animals were required to be held before being euthanized.

5. Respondent nor did her staff provide Ms. Brand with any information regarding treatment of "Smokey". Respondent euthanized the dog because it was suffering.

6. Respondent's written response to the Board failed to include a copy of the patient records for "Smokey". Respondent failed to respond to both verbal and written follow-up requests for patient records.

Conclusions of Law

1. Respondent is required to comply with the provisions of the Act and Board Rules.

2. Act § 14 (a) authorizes the Board to revoke or suspend a license, impose a civil penalty, place a licensee on probation, or reprimand a licensee based upon findings of non-compliance with the Act or Board Rules.

3. Based on Findings of Fact 3 through 6, Respondent has violated Rule 573.52 by failing to maintain patient records.

4. Based on Findings of Fact 3 through 6, Respondent has violated Act § 14 (a) (5) by engaging in practices or conduct in connection with the practice of veterinary medicine which were violative of the standards of professional conduct duly promulgated by the Board.

5. Based on any one of Conclusions of Law 3 and 4, Respondent is subject to disciplinary action by the Board under Act 14(a).

Based on the above findings of fact and conclusions of law, the Board ORDERS that Dr. Ervin receive an OFFICIAL REPRIMAND under the following terms and conditions:

1. Respondent shall bring her record keeping into compliance with the Board's requirements.

2. Respondent shall abide by the Rules of Professional Conduct, Texas Veterinary Licensing Act and the Laws of the State of Texas and the United States.

3. Respondent shall cooperate with the Board, its attorneys, investigators, compliance officers and other employees and agents, to verify that Respondent has complied and is in compliance with this Agreed Order.

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

Respondent, Lu Ann Ervin, DVM, by signing this Agreed Order, agrees to its terms, acknowledges her understanding of it and the notice, findings of fact and conclusions of law

herein set forth in the Agreed Order 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 of the Board.

Respondent, Lu Ann Ervin, DVM, by signing this Agreed Order waives her right to a formal hearing and any right to seek judicial review of this Agreed Order.

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 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 date of this Agreed Order shall be the date it is adopted by the Texas State Board of Veterinary Medical Examiners.

I, LU ANN ERVIN, DVM, HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

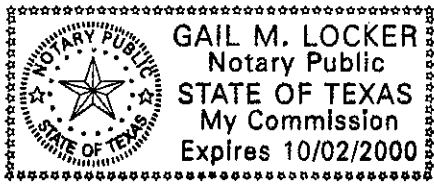
DATED: Sept 30, 1997.

Lu Ann Ervin, DVM
LU ANN ERVIN, DVM
RESPONDENT

STATE OF TEXAS
COUNTY OF McLennan

BEFORE ME, on this day personally appeared Lu Ann Ervin, DVM, known to me, who, first being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this 30th day of September, 1997.



Notary Seal

A handwritten signature in cursive script, reading "Gail M. Locker".

Notary Public, in and for the State of Texas

This agreed order has been entered between Dr. Lu Ann Ervin and Ron Allen, the Executive Director of the Texas State Board of Veterinary Medical Examiners, in concurrence with the Board Secretary. It is presented to the Board as a recommendation only.

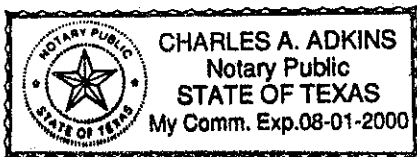
A handwritten signature in cursive script, reading "Ron Allen".

RON ALLEN, Executive Director, TSBVME

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, on this day personally appeared Ron Allen, known to me, who, first being duly sworn, signed in agreement to the foregoing Agreed Order in my presence.

SIGNED on this 1st day of OCTOBER, 1997



Notary Seal

A handwritten signature in cursive script, reading "Charles A. Adkins".

Notary Public, in and for the State of Texas

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this _____ day of _____, 1997.

A handwritten signature in cursive script, reading "James N. Gomez".

James N. Gomez, D.V.M., President

DOCKETED COMPLAINT NO. 1997-15

TEXAS STATE BOARD OF VETERINARY § TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS § LICENSE NO. 5474
vs. § 1996 RENEWAL CERTIFICATE
LU ANN ERVIN, DVM § NUMBER 3224

COMPLAINT AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared Mike Carroll, who after being duly sworn, did depose and say:

I, Mike Carroll, an employee of the Texas State Board of Veterinary Medical Examiners ("Board"), investigated the professional conduct of one Lu Ann Ervin, D.V.M., 4900 Steinbeck Bend, Waco, Texas, 76708, Veterinary License Number 5474, 1996 Renewal Certificate Number 3224, a practitioner of veterinary medicine in the State of Texas, on or about February 15, 1996.

I, Mike Carroll, on behalf of the Board, present the following complaint against Lu Ann Ervin, D.V.M., based on alleged violations of the Veterinary Licensing Act, Tex. Rev. Civ. Stat. art. 8890 ("Act"), and the Board's Rules of Professional Conduct ("Board Rules"):

I.

On October 28, 1995, a seven month old black chow "Smokey", believed to be a stray, was taken to the Animal Emergency Clinic, 115 South 18th, Waco, Texas for treatment for closed and watery eyes. Dr. Lu Ann Ervin examined the dog. The dog was not a stray and belonged to Ms. Rachel Brand.

II.

No record exists at the clinic of the dog ever being admitted. Dr. Ervin told Ms. Brand that she had a contract with the city of Waco to euthanize injured and sick animals. The contract did not specify the length of time the animals were required to be held before being euthanized.

III.

Dr. Ervin nor did her staff provide Ms. Brand with any information regarding treatment of "Smokey". Dr. Ervin euthanized the dog because it was suffering.

IV.

Dr. Ervin's written response to the Board failed to include a copy of the patient records for "Smokey". Dr. Ervin failed to respond to both verbal and written follow-up requests for patient records.

V.

Based on the above, it is alleged Respondent has violated Rule 573.52 - Patient Record Keeping of the Rules of Professional Conduct.

VI.

Based on the above, it is alleged Respondent has violated Act § 14 (a) (5).

Act § 14 (a) authorizes the Board to "revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a licensee . . . if it finds that a licensee:

- (5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with the law;

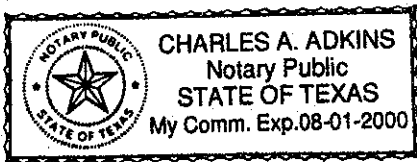
The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 18th day of AUGUST 1997.

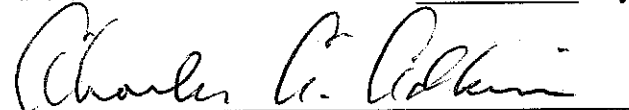
Further, Affiant sayeth not.



Mike Carroll, Affiant

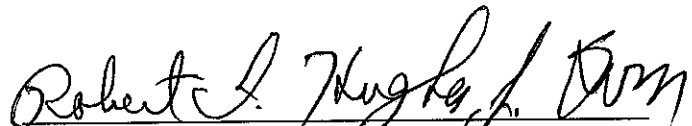
SUBSCRIBED and SWORN TO before me by the said Mike Carroll this the 18th day of AUGUST, 1997.





Notary Public in and for Texas

The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. Lu Ann Ervin, D.V.M. under Docketed Number 1997-15 this the 21st day of AUGUST 1997.



Robert I. Hughes, Jr., DVM, Board Secretary
Texas State Board of Veterinary Medical Examiners