

DOCKET NO. 2015-092

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

**AGREED ORDER**

On this the 19 day of July, 2016 came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of DAVID FAULKNER, 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 August 27, 2015. Respondent attended 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, DAVID FAULKNER, D.V.M. of Amarillo, Texas, holds Texas veterinary license 5248.
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 or about March 16, 2012, Katherine Daniels presented her six year old, female canine, named Chica, to the Hope Veterinary Clinic ("Hope Clinic") for a spay procedure and umbilical hernia repair. Respondent performed the procedures.

4. On or about June 30, 2012, Ms. Daniels observed Chica exhibiting symptoms of heat, including blood in her urine and a swollen vagina.

5. On or about July 3, 2012, Ms. Daniels presented Chica to Respondent at Hope Clinic. Yaicha Peters, D.V.M., performed an ultrasound and vaginal swabs. Ms. Daniels again presented Chica to Respondent on July 17, 2014, and Dr. Peters performed an ultrasound and vaginal swabs. Ms. Daniels questioned whether the spay procedure had been performed. Respondent stated that the ultrasounds did not reveal any remaining ovarian tissue.

6. On or about July 20, 2014, Ms. Daniels presented Chica to the Small Animal Emergency Clinic, where Jenna Beyer, D.V.M., and Patricia A. Chase, D.V.M., performed emergency exploratory surgery. The surgery revealed extensive abdominal adhesions, an enlarged uterine stump, and remaining left side ovarian tissue. The uterine stump and remaining ovarian tissue were successfully removed.

### **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 failing to remove a portion of an ovary during a spay procedure, 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 and Conclusions of Law, 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 practice or conduct that violates the board's rules of professional conduct.

4. 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:

- (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.

5. 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 further ORDERS that Respondent pay, within forty-five (45) days of the date the Board approves this Order, an administrative penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00). If Respondent fails to pay the administrative penalty within forty-five (45) days of the date of this Order, enforcement action will be taken. Further, if Respondent fails to pay the administrative penalty within 45 days of the date that the Board approves this Agreed Order, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

In addition, the Board ORDERS that Respondent complete an additional THREE (3) hours of continuing education in SOFT TISSUE SURGERY within one year of the date of this Order. Documentation of the completion of the continuing education penalty shall be received within forty-five (45) 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, 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.

**Signature page to follow.**

I, DAVID FAULKNER, 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.

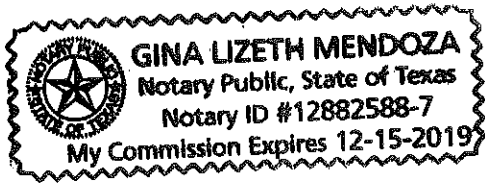
David Faulkner  
DAVID FAULKNER, D.V.M.

4-5-16  
DATE

STATE OF TEXAS §  
COUNTY OF Peter §

BEFORE ME, on this day, personally appeared DAVID FAULKNER, 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 5th day of April, 2016.



Gina L. Mendoza  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19 July, 2016.

R. Lenarduzzi  
Roland Lenarduzzi, DVM, Board President