DOCKET NO. 2008-48

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
ROBERT L. GARCIA, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 14th day of June, 2008, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Robert L. Garcia, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on March 18, 2008. The Respondent waived his right to appear for the informal settlement 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


2. According to medical records, Dr. Garcia performed the spay procedure and released “Alix” with no complications. “Alix” began exhibiting heat like symptoms. Carol and Jennifer Bufkin presented “Alix” to Dr. Peg W. Wykes, D.V.M., Diplomate of the American College of Veterinary Surgeons, Colorado Veterinary Specialists (CVS), in Littleton, Colorado for the heat like symptoms on June 29, 2007. Dr. Wykes conducted an LH blood panel on “Alix” and determined ovarian tissue was present. Carol and Jennifer Bufkin agreed to exploratory surgery. Dr. Wykes conducted the exploratory surgery and removed a complete right ovary from “Alix.” Dr. Wykes stated that it was still routine veterinary practice to remove both ovaries in a spay
procedure.

3. Dr. Garcia's failure to properly perform a spay procedure, leaving a complete right ovary following a spay procedure on "Alix" does 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 profession in good standing in Mabank, Texas or similar communities. Leaving a complete and intact right ovary following a spay procedure by Dr. Garcia does not provide the treatment offered to and paid for by the Buffkins for the heat like symptoms and to prevent their dog from becoming pregnant with unwanted puppies.

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 3, 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 3 and Conclusions of Law 1 and 2, 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.

4. Based on Conclusions of Law 1 through 3, 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.

5. Based on Conclusions of Law 1 through 3, the Board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty, under Section 801.408 of the Veterinary Licensing Act, Texas Occupations Code.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Robert L. Garcia, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay, within 30 days of the date of this Order, RESTITUTION of ONE HUNDRED DOLLARS ($100.00). If Respondent fails to pay the restitution within 30 days of the date of this Order, enforcement action will be taken.

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 his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein 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. 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, ROBERT L. GARCIA, 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.

[Signature]
Robert L. Garcia, D.V.M.

[Date]
14-15-2008

STATE OF TEXAS §
COUNTY OF Kaufman §

BEFORE ME, on this day, personally appeared ROBERT L. GARCIA, 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 15th day of April, 2008.

[Signature]
Notary Public

Agreed Order 2008-48
Robert L. Garcia, D.V.M.
SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19th day of June, 2008.

[Signature]

Bud E. Aldridge, J.D. D.V.M.