DOCKET NO. 2009-31

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

EMBERLY S. HENSON, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 11th day of June, 2009, came on to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Emberly S. Henson, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board's staff met on January 29, 2009 to consider alleged violations of the Veterinary Licensing Act and the Board's rules by Respondent.

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 April 4, 2008, Greg Munson of Mesquite, Texas presented four eight-week-old puppies to Emberly S. Henson, D.V.M., Garland, Texas, for their first vaccinations and deworming. Dr. Henson had never seen the puppies before. April Ford, a veterinary technician employed by Dr. Henson, weighed the puppies and then treated the animals by administering vaccinations and deworming medication for the prevention of disease. This is the unauthorized practice of veterinary medicine as defined in the Texas Veterinary Licensing Act, Section 801.002. Dr. Henson never saw the puppies. Mr. Munson was informed there was an additional charge to see a veterinarian.

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 Finding of Fact, Respondent has violated Rule 573.11, RESPONSIBILITY FOR UNLICENSED AND LICENSED EMPLOYEES, of the Board’s Rules of Professional Conduct, which requires veterinarians to be responsible for any acts of non-licensed employees committed within the scope of employment that constitute the unauthorized practice of veterinary medicine. Dr. Hanks failed to properly supervise his non-licensed veterinary technician and is responsible for the unauthorized practice of veterinary medicine committed by her veterinary technician.

3. Based on Finding of Fact 1 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.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Emberly S. Henson, D.V.M., be INFORMALLY REPRIMANDED.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of five hundred dollars ($500.00). If Respondent fails to pay the administrative penalty within 45 days of the date of this Order, Respondent’s license shall be suspended until the penalty is paid.

Agreed Order 2009-31
Emberly S. Henson, D.V.M.
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 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, EMBERLY S. HENSON, 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.

Emberly S. Henson, D.V.M.

Date

STATE OF TEXAS
COUNTY OF Dallas

BEFORE ME, on this day, personally appeared Emberly S. Henson, 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 9th day of February, 2009.

Mark K. O'Briant
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 11 day of June, 2009.

Bud E. Alldredge, Jr., D.V.M.
Texas Board of Veterinary Medical Examiners, President

Agreed Order 2009-31
Emberly S. Henson, D.V.M.