DOCKET NO. DK2016-194

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

AGREED ORDER

On this the 8th day of December, 2016, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Kerbey Johansen, 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 October 17, 2016. 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 understanding the alleged violations and the adequacy and sufficiency of the notice provided.

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, Kerbey Johansen, D.V.M. of San Angelo, Texas, holds Texas veterinary license 10712.

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 March 4, 2016, Linda Wallace of San Angelo, Texas, presented her dog, a ten year-old female Dachshund named Lucy, for a routine dental procedure to Respondent at Western Veterinary Hospital (hereinafter "the Clinic") in San Angelo, Texas.

4. Following the procedure, Ms. Wallace was contacted by the Clinic and informed that Lucy was due for her rabies vaccination. Mr. Wallace advised the Clinic that Lucy had
previously had a severe reaction to a rabies vaccine. The owner of the Clinic, Gary Hodges, D.V.M., advised waiting until the following Monday to administer the vaccine, due to the stress of the dental procedure. Dr. Hodges communicated this plan to Respondent.

5. Respondent administered a rabies vaccination at approximately 3:30 p.m. Respondent then monitored Lucy for an hour, but did not see any evidence of a reaction. Respondent then notified the Clinic's practice manager of her error and left the Clinic.

6. Lucy began to show signs of facial swelling at approximately 6 p.m. Dr. Hodges directed that dexamethasone be administered subcutaneously. Respondent was notified and returned to the Clinic, where she monitored Lucy until the reaction subsided. Lucy suffered from swelling and vomiting until approximately 8 p.m.

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 take action to prevent a reaction after mistakenly administering the vaccination, 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 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.

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.

5. Based on the above Findings of Fact and Conclusions of Law, and given the nature and severity of the violations, Respondent’s violations are Class B violations under Rule 575.25, RECOMMENDED SCHEDULE OF SANCTIONS, and Respondent is subject to discipline under that Rule.

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:

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 understanding the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees to 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 the right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges having understood 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 follows.
I, KERBEY JOHANSEN, 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.

Kerbey Johansen, D.V.M.  
10 Nov 2016  
DATE

STATE OF TEXAS  
COUNTY OF Harris  

BEFORE ME, on this day, personally appeared Kerbey Johansen, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me executing the same for the purposes stated therein.

Given under the hand and seal of office this 10 day of Nov., 2016.

LETICIA S HARPER  
Notary ID # 124587152  
My Commission Expires September 15, 2020  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 8 December, 2016.

Roland Lenarduzzi, D.V.M., Board President