

IN THE MATTER OF
THE LICENSE OF
PENNY KELSO, D.V.M.

TEXAS STATE BOARD OF
VETERINARY MEDICAL BOARD

AGREED ORDER

On the _____ day of _____, 2008, came on to be considered by the Texas State Board of Veterinary Medical Examiners (the "Board") the matter of the license of Penny Kelso, D.V.M. ("Respondent").

A mediated settlement was held at the State Office of Administrative Proceedings on January 22, 2008. Respondent appeared with counsel, Jon E. Porter. The Board was represented by Janie A. Carpenter, D.V.M., Board Secretary and Nicole Oria, General Counsel.

Without admitting the content of the Findings of Fact and the Conclusions of Law set forth in this agreement agrees to this settlement and waives a formal adjudicative hearing and thereby informally disposing of the issues without need of formal adjudication. Respondent agrees to comply with the terms and conditions set forth in the 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 Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Texas Occupations Code (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Veterinary License No. 8096.
3. On or about February 18, 2002, Respondent began treatment on a dog belonging to C. K. The dog was an eighteen (18) pound Chihuahua. Respondent recommended lab testing and a

special diet for the dog. Based on the lab values, Respondent diagnosed the dog as suffering from hypothyroidism.

4. After the diagnosis was confirmed Respondent provided thyroid medication for the dog.

5. Respondent continued to treat the dog for the next two years with thyroid medication. Respondent did not adequately document that she attempted to get permission from the owner to perform follow-up testing to determine the effectiveness of the medication. Respondent also once denoted client's non-compliance with diet requirements.

6. It is the opinion of the Board that Respondent did not have sufficient medical information in the form of blood work and patient's weight loss to continue the thyroid treatment on the animal and should have ceased treatment.

7. In March 2004, the dog was acting ill. On Friday, March 26, 2004, the Respondent and the owner communicated several times during the day and the owner was to call the Respondent back by the end of the day. Respondent attempted without success to contact the owner by phone. It took two days for the owner to take the dog to an animal emergency clinic. The animal expired a few days later with a diagnosis of pancreatitis, diabetes and severe anemia.

8. It is the opinion of the Board that a) two consecutive treatments with multiple corticosteroids are not the standard of care in Texas for any disease modalities possibly presented in this case, and b) that the Respondent's recordkeeping failed to meet the Board's requirements.

9. Respondent treated a cat on or about June 15, 2002 at the home of the owner, N.T. The owner described the cat as behaving poorly and urinating in the house. Dr. Kelso suggested the cat should be spayed and offered a differential diagnosis as a urinary tract infection. The owner refused for the cat to be spayed and asked for immediate treatment. Respondent administered an antibiotic to the cat. The owner alleges the medication did not have a label or instructions. Respondent alleges she did provide the owner with both oral and written instructions and proper labeling.

10. It is the opinion of the Board that the labeling and recordkeeping in this case failed to meet the Board's requirements.

11. In 2004, Respondent's practice address with the Board, the Drug Enforcement Agency (DEA) and the Texas Department of Public Safety (DPS) was at Respondent's bookkeeper rather than Respondent's practice. Regulations require the address be at the location where the controlled substances are actually administered, dispensed or stored. Respondent operates a

mobile practice. Later that year, Respondent corrected the address at the request of these agencies to her home.

12. It is the opinion of the Board that the Respondent failed to follow the requirement by DEA and DPS that the controlled substances registrations reflect the address where the controlled substances were used and stored, despite being told of this requirement in 2002 by the Board.

13. Respondent neither admits nor denies the Findings of Fact, but consents to the Order in order to cooperate with the Board as this will save money and resources for the State of Texas, to avoid further investigation, hearings, and the expense and inconvenience of litigation. Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Respondent is required to comply with the provisions of the Veterinary Licensing Act, Chapter 801, Texas Occupations Code, and with the Board's rules.

3. Based on the foregoing Findings of Fact, Respondent has violated Rule 573.4; Rule 573.22; Rule 573.40; Rule 573.53; and Rule 573.75.

4. Section 801.402(6) of the Act authorizes the Board to take disciplinary action against Respondent if the Respondent engages in practices or conduct that violates the board's rules of professional conduct.

3. Section 801.401 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

ORDER

Now, therefore, based on the above Findings of Fact and Conclusions of Law, the Board and the Respondent agree, and the Board ORDERS the following:

1. The Respondent be FORMALLY REPRIMANDED.
2. Respondent shall complete twelve (12) hours of Continuing Education in internal medicine beyond the requirement of licensing requirements and submit those hours to the Board as evidence of completion. This requirement shall be completed within one year of the entry of this Order.
3. License No. 8096, issued to Penny Kelso, D.V.M., be SUSPENDED for two years from the date this Order becomes final under Section 2001.144, Government Code, and that such suspension be PROBATED for twenty-three (23) of the twenty-four (24) months. If, during the period of probation, Penny Kelso, D.V.M., fails to comply with this Order, the Texas Licensing Act and/or the Rules of the Board, the Board shall take immediate disciplinary action(s).
4. Within sixty days (60) day of the adoption of the Order by the Board, Respondent shall submit forms regarding patient records and labeling, for approval by the Board. In addition, Respondent shall submit a practice policy to the Board for review and approval on the following issues:
 - a. Appropriate and adequate medical records;
 - b. Terminating non-compliant owners;
 - c. Proper labeling and dispensing of medications;
 - d. Delegation of the veterinary licensing act and protocols for assistants;
 - e. Receipt and storage of controlled substances; and,
 - f. proper and timely notification to the Board of practice address changes.

The Board may modify, edit, delete and/or alter the practice policies. Once the Board has approved the practice policies, the Board shall communicate to Respondent that the practice policies are approved. Respondent will institute the approved policies and forms into her practice.

5. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice. 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.
6. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's

compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

7. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

8. Respondent agrees to dismiss with prejudice SOAH Docket No. 578-03-1557, currently in District Court in Travis County, by May 30, 2008. Payment of the administrative penalty is due to the Board by May 30, 2008. The Parties agree that the payment of the administrative penalty resolves all matters in Docket No. 578-03-1557.

9. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

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.

THIS ORDER IS A PUBLIC RECORD.

I, PENNY KELSO, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: January 22, 2008.

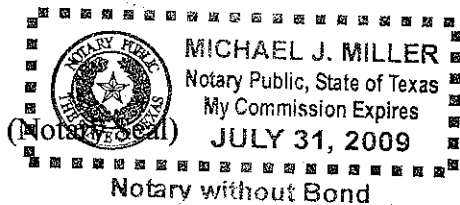
Penny Kelso, D.V.M.
PENNY KELSO, D.V.M.
RESPONDENT

STATE OF Texas

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COUNTY OF Travis

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public,
on this 22 day of January, 2008.



Michael J. Miller
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas State Board of
Veterinary Medical Examiners on this _____ day of _____, 2008.

Dr. Pat M. Allen
President Patrick Allen, DVM, Vice-President
Texas State Board of Veterinary Medical Examiners