DOCKET NO. 2012-79

IN THE MATTER OF

§

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

THE LICENSE OF

§

DAN R. KIRBY, D.V.M.

§

AGREED ORDER

On this the 24th day of July, 2012 came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Dan Kirby, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board’s staff met on April 25, 2012 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 his understanding of the alleged violations and the adequacy and sufficiency of the notice provided to him.

Upon the recommendation of the Staff 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, Dan R. Kirby, D.V.M. of San Antonio, Texas, holds Texas veterinary License 5509.

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 January 19, 2012, investigators from the Board conducted a compliance inspection on Alamo Heights Pet Clinic ("Clinic") in San Antonio, Texas. Respondent is the owner of the Clinic.

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4. The inspection revealed that the patient records of animals that had received chiropractic 
and musculoskeletal treatments at the Clinic did not contain signed acknowledgements from the 
owner or other caretaker of patients, stating that chiropractic or musculoskeletal manipulation is 
considered by Texas law to be an alternate or non-standard therapy.

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 Findings of Fact above, Respondent has violated Rule 573.12, 
ALTERATE THERAPIES—CHIROPRACTIC AND OTHER FORMS OF 
MUSCULOSKELETAL MANIPULATION, of the Board’s Rules of Professional Conduct, 
which states that a veterinarian may only perform chiropractic and other forms of 
musculoskeletal manipulation if the veterinarian obtains as part of the patient’s permanent record 
a signed acknowledgement by the owner or other caretaker of the patient that chiropractic or 
musculoskeletal manipulation is considered by Texas law to be an alternate, non-standard 
therapy.

3. Based on Findings of Fact 1 through 4 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: (a)

(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 Conclusions of Law 1 through 4, Respondent may be disciplined in the manner set out in Section 801.431, 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 an INFORMAL REPRIMAND.

The Board further ORDERS that Respondent shall take and pass the Texas veterinary jurisprudence examination within 90 days from the date of this Agreed Order.

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 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.

I, DAN R. KIRBY, 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.

DAN R. KIRBY, D.V.M.  

DATE  

5/22/2012  

STATE OF TEXAS  
COUNTY OF BEXAR  

BEFORE ME, on this day, personally appeared Dan R. Kirby, 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 22 day of May, 2012.

HEATHER A. SCHMIDT  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 24th day of July, 2012.

Bud E. Alldredge, Jr., D.V.M., President