DOCKET NO. 2004-17

IN THE MATTER OF § TEXAS STATE BOARD OF

THE LICENSE OF §

KIMBERLY KLEIN, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 17th day of June, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of KIMBERLY KLEIN, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on April 28, 2004. The Respondent attended without counsel. 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 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 May 17, 2003, a pot-bellied pig, "Zoie," owned by Phyllis Gutierrez, San Antonio, Texas, was attacked by two rottweilers who inflicted serious injuries on the pig. Ms. Gutierrez was out of town at the time, and when she returned on May 19th, she cleaned the pig’s wounds and called Kimberly Klein, D.V.M., Hooves & Paws Veterinary Clinic, San Antonio, Texas, who agreed to see "Zoie."

2. Ms. Gutierrez presented the pig to Dr. Klein on May 20th. Dr. Klein suggested two options: one, to treat the pig with antibiotics and provide extensive wound treatment, with extensive home care, and with no guarantee of success; or two, euthanasia. After extensive discussions with Dr. Klein, Ms. Gutierrez chose euthanasia. A consent form was signed. Dr. Klein attempted to inject 60 cc of euthanasia solution into the pig’s jugular vein, but she may have missed the vein. She also attempted an injection into an ear vein. Two hours later, at about 6:00 p.m., the pig was still alive. Dr. Klein told Ms. Gutierrez that she could take "Zoie" home and that the pig would probably be dead by the time she got home. At about 9:30 p.m., Ms. Gutierrez reported to Dr. Klein that the pig was still alive. Dr. Klein told Ms. Gutierrez that it would be a miracle if the pig was still alive in the morning.
3. Early on May 21st, Ms. Gutierrez reported to Dr. Klein that “Zoie” was still alive. She returned the pig to the clinic that morning. Dr. Klein told Ms. Gutierrez that she did not know what to do with “Zoie.” The pig was left in the transporting trailer and measures were taken to keep “Zoie” as comfortable as possible. At about 4:45, the clinic’s staff called Ms. Gutierrez to report that the pig had died.

4. Based on Findings of Fact 2 and 3, Dr. Klein’s failure to euthanize the patient in a timely and humane manner, which resulted in the animal living for 24 hours after the euthanasia solution was administered, 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 community in San Antonio, Texas, or similar communities.

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 Findings of Fact 2 through 4, 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 Findings of Fact 2 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:

(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 a civil 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 Kimberly Klein, D.V.M., be INFORMALLY REPRIMANDED.

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 is not 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, KIMBERLY KLEIN, 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.
STATE OF TEXAS §
COUNTY OF Bexar §

BEFORE ME, on this day, personally appeared KIMBERLY KLEIN, 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 18 day of May, 2004.

MARY S. SHAFFER
MY COMMISSION EXPIRES
October 6, 2008
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 17th day of June, 2004.

Dee Pederson, D.V.M., President