

labor. Ms. Lucero had been advised previously by her regular veterinarian, Kelly Brown, D.V.M. in Midland, Texas, that Star would likely need to undergo a caesarian section procedure to deliver her puppies due to her small size.

4. At approximately 8:00 a.m. on January 20, 2013, Ms. Lucero called Respondent and told him that Star seemed to be in labor and may need some assistance delivering the puppies. Respondent told Ms. Lucero to come to the Caprock Veterinary Clinic ("Clinic") in Lubbock, Texas, which he owns, and he would examine Star.

5. At approximately 8:45 am on January 20, 2013, Ms. Lucero presented Star to Respondent at the Clinic. Ms. Lucero told Respondent about her regular veterinarian's recommendation that Star deliver by caesarian section. Respondent told Ms. Lucero that he wanted to see if Star could deliver the puppies without surgery. Respondent administered injections of the steroid Dexamethasone (trade name "Azium Solution"), the antibiotic Penicillin G Benzathine (trade name "Durapen"), and the drug Oxytocin to attempt to induce labor. Durapen and Oxytocin are approved by the Food and Drug Administration ("FDA") in more than one concentration, but Durapen is only approved in one concentration.

6. Respondent did not wait around to watch and see if the drugs produced the desired effects, but rather he told Ms. Lucero to take Star to Ms. Lucero's vehicle and wait while he left the Clinic to attend to a horse patient. Respondent did not supervise the animal or provide an employee of the Clinic to supervise the animal. Respondent called Ms. Lucero at 9:39 a.m. to check on Star's progress and thus, presumably, Respondent left several minutes earlier than that. Ms. Lucero informed him that there was no progress. Before he left, Respondent requested and received payment from Ms. Lucero of \$149.00 for his services up to that point.

7. At approximately 9:44 am and 9:57 am, Respondent called Ms. Lucero to ask about Star's progress. Ms. Lucero again informed him that there was no progress.

8. Respondent arrived back at the Clinic at about 10:30 am and took Star back to the surgery room in his Clinic.

9. Respondent used a combination of Xylazine and Ketamine as anesthesia prior to surgery. Xylazine and Ketamine are approved by the FDA in more than one concentration.

10. After inducing anesthesia, Respondent successfully performed a caesarian section procedure on Star and delivered one large puppy and one very small puppy. Respondent's veterinary medical records for this procedure provide no details necessary to substantiate the examination or surgery that Respondent had just performed on Star on January 20, 2013. Respondent's veterinary medical records with regards to the details of this procedure provide "Emergency c.section." Respondent's veterinary medical records do not state the concentration of each drug administered to Star on January 20, 2013. Respondent's veterinary medical records also do not substantiate any examination performed on either one of the puppies that Respondent

delivered via caesarian. Nonetheless, Respondent's records show that at least one of the puppies intravenously received the drug Doxapram (trade name "Dopram") and fluids.

11. Respondent's patient records for his treatment of Star and her puppies do not include details necessary to substantiate examination, treatment or surgery, or names, dosages, and concentrations for each drug administered.

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 1 through 11, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board's Rules of Professional Conduct, by injecting Star with Azium Solution, Durapen, and Oxytocin and then leaving to deal with a horse patient instead of watching after Star to make sure that no complications arose from that administration of drugs and that Star did not need further assistance with her delivery.

3. Based on Findings of Fact 1 through 11, Respondent has violated Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct, by failing to record details necessary to substantiate examination, treatment and surgery performed, and concentrations of drugs administered.

4. Based on Findings of Fact 1 through 11 and Conclusions of Law 1 through 3, 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.

5. Based on Conclusions of Law 1 through 4, 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.

6. Based on Conclusions of Law 1 through 5, Respondent may be disciplined in the manner set out in Section 801.451, 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 a FORMAL REPRIMAND.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of one thousand dollars (\$1000.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, Respondent's license may be suspended until the penalty is paid, and any payment by the Respondent to the Board to renew his license will be applied toward the payment of any administrative fee owed to the Board, and further enforcement action may be taken.

In addition, the Board ORDERS that Respondent complete an additional THREE (3) hours of continuing education in recordkeeping within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received by thirty (30) days following the end of the period to receive the continuing education required for this Order. If Respondent fails to provide documentation of completion within forty-five (45) days from the end of the period to receive the continuing education, Respondent's license shall be suspended until the continuing education penalty is completed and documentation is received by the Board.

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 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, KODY KOTHMANN, 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 IN THIS MATTER.


KODY KOTHMANN, D.V.M.

1/7/15
DATE

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, on this day, personally appeared Kody Kothmann, 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 7th day of January, 2015.



Notary without Bond

Lauri C. Lowry
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 27 of January, 2015.

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