

SOAH DOCKET NO. 578-16-0462
TBVME DOCKET NO. DK2015-201

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

FINAL DECISION AND ORDER

On this day the Texas Board of Veterinary Medical Examiners (“Board”) considered the matter of the license of Kristen Lindsey, D.V.M. (“Respondent”).

On March 31, 2016, the Board filed a Notice of Hearing (“NOH”) and Formal Complaint with the State Office of Administrative Hearings (“SOAH”). The NOH and Formal Complaint were sent to the address listed in the Board’s records for Respondent’s attorney of record, Brian Bishop, by certified mail, return receipt requested, and by email.

On April 26 and 27, 2016, a hearing convened at SOAH, located at the William B. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The hearing was presided over by Administrative Law Judges (“ALJs”) Catherine Egan and Pratibha Shenoy. Respondent appeared and was represented by attorney Brian Bishop. The ALJs filed a Proposal for Decision (“PFD”) on August 15, 2016, containing Findings of Fact and Conclusions of Law and a recommended penalty. The PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. On September 19, 2016, the ALJs issued an Exceptions Letter, which recommended one change to the PFD.

On October 18, 2016, the Board convened in a regular meeting held pursuant to the Open Meetings Act, Tex. Govt. Code § 551.071 and Tex. Occ. Code § 801.407(d). Board Members Roland Lenarduzzi, D.V.M. and Chad Upham were recused from the decision. The Board voted unanimously to adopt the Findings of Fact contained in the PFD, including the change recommended in the Exceptions Letter. These Findings of Fact are set forth below. The Board also voted unanimously to adopt the Conclusions of Law contained in the PFD, with the exception of Conclusion of Law No. 12, which contained the ALJs’s recommended penalty. These Conclusions of Law, and the specific reasons and legal bases for the changes to the recommended penalty, are set forth below.

Findings of Fact

1. Kristen Lindsey, D.V.M. (Respondent) is licensed as a veterinarian by the Texas Board of Veterinary Medical Examiners (Board). The Board issued to Respondent Texas Veterinary License No. 12622 on June 25, 2012.
2. On March 31, 2016, the Board's staff (Staff) issued its First Amended Notice of Hearing.
3. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the factual matters asserted.
4. The hearing on the merits was held April 25-26, 2016, before Administrative Law Judges (ALJs) Catherine C. Egan and Pratibha J. Shenoy at the hearing facilities of the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas. Staff Attorney Michelle Griffin represented Staff. Attorney Brian Bishop represented Respondent. The record closed on July 8, 2016, after submission of written closing arguments by the parties.
5. Respondent's pleas to the jurisdiction were denied in Order No. 5 (January 22, 2016) and Order No. 10 (April 19, 2016) because they did not state a basis on which SOAH ALJs are empowered to act.
6. Respondent graduated from the University of Wyoming with a bachelor's degree in biology in 2006. Respondent received a full scholarship for her college education.
7. In 2012, Respondent received her D.V.M. degree from Colorado State University College of Veterinary Medicine.
8. Respondent successfully completed a one-year equine medicine internship and was offered a permanent position at Equine Sports Medicine & Surgery in Weatherford, Texas.
9. In July 2013, Respondent began working at Washington Animal Clinic (the Clinic) in Brenham, Texas. At the Clinic, Respondent specialized in equine medicine, but also treated cats and dogs.
10. Respondent lived in a rental property owned by Bruce Buenger, D.V.M., a senior veterinarian and one of the owners of the Clinic. Respondent's rental property abutted Dr. Buenger's home and property.
11. In late March and early April 2015, Respondent noticed a feral, orange, male tabby cat visiting her property.

12. Respondent had also seen two other stray cats: a black-and-white cat and a gray, female cat.
13. Because the gray cat was friendly and slept on her porch, Respondent was trying to socialize the cat so Respondent could catch her humanely.
14. Respondent began finding cat feces in her horse feed troughs and attributed it to the feral, orange, male tabby cat.
15. Respondent observed the feral tabby fighting with her own pet cat on the porch of her property, and was concerned that her cat would be injured.
16. Beginning in December 2014, Respondent engaged in target practice with a bow and arrow, shooting at archery blocks she set up in her yard.
17. On the night of April 13, 2015, Respondent observed the feral cat fighting with her cat on her porch, and scared it away.
18. The next day, Respondent mentioned her problems with the feral cat to Dr. Buenger. Respondent learned that Dr. Buenger did not own the cat and did not know if anyone did, and he had seen the cat but had not experienced any trouble with it before.
19. Respondent saw Dr. Buenger as her mentor and sought his advice on personal as well as professional veterinary matters.
20. Respondent asked Dr. Buenger what to do about the cat, and recalls that he stated, "Take care of it."
21. Respondent understood Dr. Buenger's statement to mean that she had permission from the landowner to kill what she believed was a feral cat straying onto the property.
22. On the evening of April 15, 2015, Respondent was practicing archery when she turned and saw an orange cat approximately 20 yards away.
23. Believing she was shooting the feral cat that had been a nuisance on her property, Respondent took aim and shot an arrow at the cat's head.
24. Respondent placed the shot based on her experience hunting since she was 10 years old, and her familiarity with where to place a shot to instantly kill an animal.
25. The arrow struck the cat through the head, and it died instantaneously without suffering.

26. Approximately five to ten minutes after Respondent shot the cat, Respondent's mother took a photograph of Respondent holding the shaft of the arrow with the dead cat dangling down.
27. After taking the photograph, Respondent disposed of the cat's body in a dump pit behind her property.
28. One to two hours after the photograph was taken, Respondent posted it on her Facebook page with the caption: "My first bow kill [cat emoticon] lol. The only good feral tomcat is one with an arrow through it's [sic] head! Vet of the year award ... gladly accepted [crying/laughing emoticon]."
29. Respondent meant the caption to be facetious because she knew it was the type of conduct and comment that the general public did not expect from a veterinarian.
30. The Facebook post quickly achieved national and international distribution. Respondent became aware of the media attention late in the day on April 16, 2015, and deleted the Facebook post.
31. Also on April 16, 2015, Respondent learned that some viewers of the Facebook photograph believed the cat she killed to be Tiger, a neutered orange tabby belonging to her neighbors across the street.
32. Respondent returned to the dump pit and retrieved the cat's body to take a photograph of its genital area in order to prove that the cat she shot had testicles.
33. The remains were partially eaten by other animals before the photograph was taken. The photograph of the remains is blurry and it is not possible to determine whether certain features in the picture are intact testicles belong to an unneutered cat, or the prepuce and atrophied scrotal sac of the neutered cat believed to be Tiger.
34. A pet sitter who took care of Tiger took a video in November 2014 of Tiger riding with her on a small utility vehicle as she drove around his owners' property.
35. The cat in Respondent's Facebook photograph and the cat in the video (Tiger) have a very close resemblance with respect to a band of white fur down the trachea extending halfway up the cervical area, a belt of white fur on the left-hind thigh extending in a semicircle from the knee to the back part of the leg, and a single stripe going towards the eye on the left side.
36. Based on Tiger's distinctive fur markings and the fact that Tiger went missing at the time of the shooting and has not been seen since, a preponderance of the evidence establishes that the cat that Respondent shot and displayed in her Facebook photograph is Tiger.

37. Respondent did not have the effective consent of Tiger's owners before she shot and killed the cat.
38. An orange tabby is a common cat, and there were other orange-and-white cats in the vicinity of Respondent's property.
39. Respondent took aim and shot the cat within 20 seconds of noticing it, and at a distance of 20 yards. Respondent could not ascertain in that period of time and at that distance whether the cat was the same feral cat she had observed previously.
40. Respondent did not ask any of her neighbors, other than Dr. Buenger, whether they owned the feral cat; attempt to use a humane trap; call Animal Control; or take other nonlethal actions before shooting the cat.
41. If Respondent had suspected the cat was a pet, she would not have taken the shot.
42. Respondent's conduct in shooting the cat was reckless because she disregarded the risk that the cat was a pet and killing or injuring it would cause emotional pain and suffering to its owner. An ordinary person exercising care would not have shot the cat under those circumstances.
43. The Clinic terminated Respondent's employment on April 17, 2015, because of her actions in taking and posting the Facebook photograph. Respondent has not been regularly¹ employed as a veterinarian since that date.
44. As a result of the Facebook post, Respondent and her family began receiving threats of rape, bodily injury, and death via mail, telephone, email, and text message.
45. On June 24, 2015, a criminal charge of Cruelty to Non-Livestock Animals was presented to a grand jury in Austin County, Texas. The grand jury returned a Notice of No Bill, ending the criminal prosecution of Respondent.
46. Respondent's caption on the Facebook post directly linked her actions to the veterinary profession.
47. The Board received thousands of complaints from private citizens, veterinary professionals, animal welfare groups, and others. Tiger's owners filed a complaint with the Board, leading to an investigation and the docketing of this case at SOAH.

¹ The Board has incorporated the ALJs's recommendation in the Exceptions Letter by adding the word "regularly" to this Finding of Fact.

48. Tiger's owners support a sanction that would permit Respondent to learn from this experience and build her character.
49. Respondent's conduct did not cause a hazard or risk to public health, safety, or economic welfare, and did not result in economic harm to property or the environment.
50. Respondent has no prior history of misconduct or criminal activity.
51. Respondent has been deterred from similar reckless actions in the future.
52. Respondent held a mistaken but sincere belief that she was committing a legal act for which she had permission.
53. Respondent's decision to shoot the cat was a split-second, spontaneous action.
54. Prior to the incident, Respondent maintained a strong academic and work record.
55. Respondent grew up in a rural community in north central Wyoming, where state law permits the killing of stray cats with few restrictions.
56. In Respondent's experience, rural communities often face problems attempting to control feral cat populations, and lack the resources to trap, neuter, vaccinate, and release feral cats.
57. Some residents in Respondent's rural Texas community dispatch feral cats by gunshot to the head or heart and lungs.
58. There is disagreement among professional veterinary association members as to the proper management of feral cat populations.
59. Respondent does not have a predilection for mistreating or neglecting animals.
60. Respondent's focus is equine medicine and she is not likely to have much contact with small animals in the course of her practice.
61. Respondent is a caring and affectionate pet owner and treats her patients with patience and compassion.
62. Respondent signed a sworn statement on October 26, 2015, in which she untruthfully attested that she believed the cat she killed likely had rabies.
63. In a February 2016 deposition and at hearing, Respondent admitted that she did not believe the cat had rabies and accepted fault for the misrepresentation.

64. The killing of Tiger caused grief for his owners and pet sitter.
65. Respondent's conduct is not a minor violation; however, Respondent is not an imminent threat to the public.

Conclusions of Law

1. The Board has jurisdiction and authority to take disciplinary action against a licensee who engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine, or who violates the Board's Rules of Professional Conduct. Tex. Occ. Code §§ 801.401, .402(4), (6).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code Ch. 2003; Tex. Occ. Code § 801.407.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051, .052.
4. Staff had the burden of proving the case by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. A misdemeanor or felony offense involving animal cruelty is an offense connected with the veterinary profession. 22 Tex. Admin. Code § 575.50(f)(5)(J).
6. The Board may take disciplinary action based on proof of the commission of an act while in the practice of, or under the guise of the practice of, veterinary medicine, with or without a complaint, indictment, or conviction of a law violation. 22 Tex. Admin. Code § 573.4.
7. Staff proved by a preponderance of the evidence that Respondent committed the elements of the offense of Cruelty to Non-Livestock Animals under Texas Penal Code § 42.092(b)(2), in that Respondent killed an owned cat without the effective consent of the owner, and her conduct recklessly ignored the risk that the cat had an owner. Further, Respondent has not proven any of the defenses permitted. Respondent is subject to discipline pursuant to Texas Occupations Code § 801.402(4).
8. Staff proved by a preponderance of the evidence that Respondent violated one of the Board's Rules of Professional Conduct by committing conduct constituting Cruelty to Non-Livestock Animals while acting under the guise of the practice of veterinary medicine. Respondent is subject to discipline pursuant to Texas Occupations Code § 801.402(6).

9. Among the Board's disciplinary powers is the authority to revoke or suspend a license, reprimand a license holder, impose administrative penalties, and require license holders to participate in continuing education programs. Tex. Occ. Code §§ 801.401, .451.
10. The Board has promulgated a Recommended Schedule of Sanctions that must be considered by the ALJs and the Board in determining the appropriate sanctions. Tex. Occ. Code § 801.407(c); 22 Tex. Admin. Code § 575.25.
11. Under the Board's schedule of recommended sanctions, Respondent's conduct is properly characterized as a Class B violation, for which the Board is authorized to impose maximum penalties that may include a one to 10-year license suspension with none, all, or part probated; a penalty not exceeding \$5,000 for each violation per day; continuing education in a specified field related to the licensee's practice that the Board deems relevant to the violation(s); quarterly reporting certifying compliance with Board orders; and/or a requirement that the licensee sit for and pass the appropriate licensing examination. 22 Tex. Admin. Code § 575.25(b)(3).

Changes to Conclusion of Law No. 12

The ALJs concluded in the PFD that the Board should issue a five-year suspension of Respondent's license, with four years fully probated, and the entire period subject to quarterly reporting requirements; require Respondent to complete continuing education hours in the areas of veterinary jurisprudence and animal welfare (and/or such other subjects as the Board sees fit); and impose a community service requirement of at least 100 hours of volunteering time at a feline rescue, free spay/neuter clinic, or similar facility.

The Board did not believe quarterly reporting was necessary during the first year of Respondent's suspension, as she would not be permitted to practice veterinary medicine during that period. Thus, the Board changed this portion of the recommended penalty to require quarterly reporting only during the period of probation.

The PFD left the number of hours and subject of the recommended continuing education hours to the Board's discretion. Based on the nature of Respondent's violations and the limited availability of continuing education hours in the recommended areas, the Board determined that Respondent should complete six hours of continuing education in the area of animal welfare.

The disciplinary powers of the Board are provided in Texas Occupations Code § 801.401. The Board does not have the statutory authority to require Respondent to complete community service. Therefore, the Board removed this portion of the recommended penalty.

Order

The Board orders that Respondent's license be suspended for five years. Respondent's license

shall be actively suspended (or "downtime") during the first year of the suspension. During the four remaining years of the suspension, the suspension shall be stayed and Respondent's license placed on probation. The five-year suspension period shall run from the date this order is signed.

During the one-year period of downtime, Respondent shall not practice nor give the appearance of practicing veterinary medicine, nor shall she supervise other licensees, or supervise, encourage, or allow any person who is not licensed to practice in Texas, to perform the practice of veterinary medicine.

During the five-year period of the suspension, Respondent shall notify all present and prospective employers of this Board order, including the terms, conditions, and restrictions imposed. Within 30 days of the effective date of the order and within 15 days of undertaking new employment, Respondent shall cause her employers to provide written acknowledgment to the Board that they have read and understand the terms and conditions of the Board order.


During the five-year period of the suspension, Respondent shall notify all veterinarians, equine dental providers, and veterinary technician employees with whom Respondent practices of the Board order and, within 30 days of the effective date of the order, Respondent shall acknowledge to the Board in writing that this has been done.

The Board further orders that Respondent shall submit quarterly reports to the Board during the period of the probation. These reports shall include details of Respondent's continued adherence to the laws and rules connected with the practice of veterinary medicine, including the Veterinary Licensing Act and the Board's Rules. These reports shall be prepared by a supervising veterinarian, to be approved by the Board's Executive Director.

In addition, the Board orders that Respondent complete six hours of continuing education in the area of animal welfare. These hours are in addition to the 17 hours required to be completed annually by 22 Tex. Admin. Code § 573.64. The continuing education penalty shall be completed by the end of the five-year suspension period. Respondent shall submit documentation of the continuing education penalty, along with documentation of the 17 hours required annually, within 45 days of the end of the five-year suspension period.

The effective date of this Final Decision and Order shall be the date it is signed by the Board President.

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the October 20, 2016.


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