DOCKET NO. 2013-30

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

AGREED ORDER

On this the 25th day of March, 2013, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Marilyn Maltby, D.V.M. A meeting of the Board's Executive Disciplinary Committee occurred on December 7, 2012, at which the Executive Disciplinary Committee temporarily suspended Respondent's veterinary license pursuant to Board Rule 575.35, and found that Respondent's continued practice of veterinary medicine constitutes a continuing threat to public welfare. A temporary suspension hearing before the Board's Enforcement Committee was held on December 17, 2012. The Respondent appeared at the hearing after receiving sufficient notice. The Board was represented at the hearing 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. Respondent, Marilyn Maltby, D.V.M., of Austin, Texas holds Texas veterinary license 6473.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice and due process required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN. Title 4 (the "Act"). By executing this Order, Respondent waives any judicial review, defect in notice, hearing and/or due process and/or any further right to judicial review, notice, hearing and/or due process under the Act, TEX.

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GOV'T CODE ANN. §§ 2001.051 through .054, and the Rules of the Texas Board of Veterinary Medical Examiners (22 TEX. ADMIN. CODE Chapter 575).

3. On December 8, 2009, the Board entered Agreed Order No. 2010-11, disciplining Respondent for testing positive for Tramadol and missing two drug screenings while under a contract with the Board's Peer Assistance program. The Board ordered Respondent to enter into a two-year extension of her Peer Assistance contract.

4. On October 18, 2011, the Board entered Agreed Order No. 2011-75, disciplining Respondent for missing drug screenings and testing positive for Tramadol. The Board ordered Respondent to receive a formal reprimand, extended her contract with the Peer Assistance program for an additional five years, suspended her license for 30 days, placed her on a probated license suspension for one year, and required that she not test positive for any drug without a valid prescription for that drug during the term of that Order.

5. On October 1, 2012, Respondent tested positive for Tramadol. Respondent denied having taken Tramadol, and requested that the split specimen be tested to rule out lab error. On October 23, 2012, the lab reported that the split specimen had also tested positive for Tramadol. Respondent did not have a valid prescription for Tramadol on October 1, 2012.

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 above Findings of Fact, Respondent has violated Rule 573.62, VIOLATION OF BOARD ORDER/NEGOTIATED SETTLEMENTS, of the Board's Rules of Professional Conduct, which requires a licensee to comply with all terms and conditions of final agreed orders.

3. Based the above Findings of Fact, Respondent has violated §801.402 (6) of the Veterinary Licensing Act, Occupations Code, and is therefore 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.

NOW, THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, in lieu of any administrative penalties or reprimands associated with a finding of a violation of the Board's rules and the Veterinary Licensing Act, Respondent agrees to voluntarily cancel her veterinary license and not seek reinstatement by the Board for five years from the date of this Order.

Respondent further agrees that her veterinary license will remain suspended until the Board meets and decides whether to adopt 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 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 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. 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, **MARILYN MALTBY**, 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.

Marilyn Maltby, DVM
Marilyn Maltby, D.V.M.

1/24/13
Date

STATE OF TEXAS §
COUNTY OF Travis §

BEFORE ME, on this day, personally appeared Marilyn Maltby, 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 24th day of January, 2013.

LINDA KILIAN
Notary Public, State of Texas
My Commission Expires
JANUARY 16, 2015

Linda Kilian
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 25 day of March 2013.

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

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