DOCKET NO. 2013-65

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
JESSICA MARZIANI, 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 Jessica Marziani, D.V.M. (“Respondent”). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board’s staff met on January 22, 2013 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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, Jessica Marziani, D.V.M. of Crystal Beach, Texas, holds Texas veterinary License 11555.

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 November 21, 2011, Peggy and James Rutledge presented their two-year old female beagle-mixed breed dog named “Bella” to Respondent at the Winnie Veterinary Clinic in Winnie, Texas for a spay procedure.

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4. Respondent performed the spay procedure on “Bella.” Following surgery, “Bella” showed hind-end paresis, which seemed to improve slightly during the first day after the operation. Radiographs of “Bella’s” spine did not show anything remarkable.

5. That afternoon, Respondent performed acupuncture on “Bella” to treat paresis. Respondent failed to obtain a signed statement from the animal’s owner acknowledging that acupuncture is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal, and no such statement became a part of the permanent patient record for “Bella.”

6. Respondent repeated the acupuncture treatment on “Bella” on November 25, November 29, and December 13, 2011. Respondent’s patient records for “Bella” do not contain any statements signed by Mr. and Mrs. Rutledge, acknowledging that acupuncture is an alternate therapy or approving its use on “Bella.”

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 573.16, ALTERNATE THERAPIES--ACUPUNCTURE, of the Board’s Rules of Professional Conduct, which states that a veterinarian may perform acupuncture only after first informing the client of the conventional treatments available and their probable ability to cure the problem, and then obtaining from the client a signed statement, which becomes a permanent part of the patient’s record, acknowledging that acupuncture is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal.

3. Based on Findings of Fact 1 through 6 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 801.451, 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 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.

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Respondent, by signing this Agreed Order, acknowledges her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law 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. 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, JESSICA MARZIANI, 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.

JESSICA MARZIANI, D.V.M.  2/8/13
DATE

STATE OF TEXAS
COUNTY OF  HARRIS  

BEFORE ME, on this day, personally appeared Jessica Marziani, 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 8th day of February, 2013

MARISSOL MOLINA
Notary Public, State of Texas
My Commission Expires September 21, 2016

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Jessica Marziani, D.V.M.
SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 25th of March, 2013.

[Signature]

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