AGREED ORDER 2009-23

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

AGREED ORDER

On this the 12th day of February, 2009, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Sonya McClendon, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on January 8, 2008. The Respondent was present at the informal settlement conference. 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 Agreed 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 April 2, 2008, Joyce Jeter of Marshall, Texas, presented "Star" a three year-old female rat terrier dog to Sonya McClendon, DVM, McClendon Veterinary Service, Marshall, Texas, for coughing symptoms. Mrs. Jeter also requested that "Star" receive a bath and nail grooming.

2. Dr. McClendon examined "Star" and diagnosed "Star" with mild bronchitis with tracheitis, possibly due to a bordetella infection. After the examination, Samantha Maxwell, a veterinary technician at Respondent's clinic, attempted to administer Metacam orally with a syringe. "Star" bit Ms. Maxwell on her hand, but she was successful on her second attempt. "Star" was placed on a table in the kennel, where Ms. Maxwell attempted to medicate "Star" with a Primor pill antibiotic. Ms. Maxwell was unable to administer the medication as "Star" continued to snap at her. Dr. McClendon also tried to administer the medication, but was bitten in the process. Dr. McClendon ultimately used a pill pusher to successfully administer the medication. In the
process, “Star” bit Dr. McClendon twice more. However, when Dr. McClendon pulled her hand back, “Star” bit her on the thumb and would not release. Dr. McClendon slapped “Star” on the muzzle several times in an attempt to get “Star” to release her thumb. In the confusion, “Star” fell off the table and hit her head on the floor. “Star” was then given a flea bath and placed in a kennel to dry. While drying in the kennel, “Star’s” nose began to bleed. Ms. Jeter was in the clinic’s waiting room while the medication was administered. While she was paying her bill, Dr. McClendon stated that “Star” had bitten her, and if it was her dog, she would have “beat the hell out of her.” Dr. McClendon also said she did not want to see “Star” at her clinic anymore, and Mrs. Jeter apologized. “Star” was picked up by Mrs. Jeter’s husband, at approximately 4:30 p.m. that day and presented with blood on her nose. A staff member of the clinic informed Mr. Jeter that “Star” had fallen off an examination table.

3. “Star’s” nose continued to bleed after returning home. At approximately 8:00 p.m. that evening, Mrs. Jeter noticed that “Star” had become lethargic. On the morning of April 3rd “Star” was still lethargic and her nose still bleeding. She could not walk and was having difficulty breathing. At approximately 7:30 a.m., Mrs. Jeter presented “Star” to Jason Anderson, D.V.M., Marshall Animal Hospital, where a blood profile was conducted and radiographs taken. Dr. Anderson diagnosed “Star” with severe head trauma. “Star” suffered seizures while being examined, which left her “non-responsive and in an apparent vegetative state,” and “eventually went into cardio/respiratory arrest.” Once Dr. Anderson informed Mrs. Jeter of “Star’s” status, she elected to euthanize “Star.”

4. Dr. McClendon’s failure to properly restrain and administer medication to “Star” 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 profession in good standing in Marshall, Texas or similar communities. Specifically, (1) Dr. McClendon’s failure to properly restrain “Star” during the administration of medication, (2) her failure to allow “Star’s” owner – who was in the clinic waiting room – to administer the medication to “Star,” rather than administer it herself and (3) her failure to recognize that “Star’s” continuing nosebleed subsequent to her fall was a sign of head trauma and treat accordingly, led to complications which contributed to the untimely death of “Star.”

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 Finding of Fact 2-4, Respondent has violated Rule of Professional Conduct §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, 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

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similar communities.

3. Based on Finding of Fact 2-4 and Conclusions of Law 1 and 2, Respondent has violated §801.402(6) of the Veterinary Licensing Act (the “Act”), 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 §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 §801.401 of the 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 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 (“CE”). The board shall specify the CE that the license holder may attend and the number of hours that the license holder must complete. CE specified by the board must be relevant to the violation committed by the license holder.

5. Based on Conclusions of Law 1-3, the Board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of, or in addition to, imposing an administrative penalty, under §801.408(e) of the Act.
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 be FORMALLY REPRIMANDED.

The Board further ORDERS Respondent to pay an Administrative Penalty in the amount of Five Hundred Dollars ($500.00).

The Board further ORDERS that Respondent complete three (3) hours of CE in the area of Animal Behavior. The CE hours are in addition to any CE hours Respondent is required to complete pursuant to Board Rule 573.64. Documentation reflecting completion of the Animal Behavior CE shall be received by February 12, 2010. **If Respondent fails to provide said documentation within 30 days of February 12, 2010, Respondent’s license shall be suspended until the Animal Behavior CE is completed and documentation of same is received by the Board.**

The Board further ORDERS that Respondent pay, within 30 days of the date of this Order, pay restitution in the amount of One Hundred Eleven Dollars and Eighty Two Cents ($111.82). If Respondent fails to pay the restitution within 30 days of the date of this Order, enforcement action will be taken.

The Board further ORDERS that:

1. Respondent shall abide by the Rules of Professional Conduct, the 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 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 to 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, SONYA MCCLENDON, 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.

[Signature]
Sonya McClendon, D.V.M.

Date: 1-27-09

STATE OF TEXAS

COUNTY OF Harris

BEFORE ME, on this day, personally appeared SONYA MCCLENDON, 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 27 day of January, 2009.

[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the ___ day of __________, 2009.

[Signature]
Bud E. Allredge, Jr., DVM

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