SOAH DOCKET NO. 578-13-0168  
DOCKET NO. 2011-65

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

AGREED ORDER

On this the 16th day of July, 2013, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Melanie Mercer, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on March 28, 2011. The Respondent was represented by legal counsel 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 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


2. Dr. Mercer performed a neuter surgery, but left a testicle in the scrotum. This testicle was discovered in the scrotum by Brandy Porterpan, D.V.M. at the Animal Diagnostic Clinic in Mesquite, Texas on November 27, 2006 when she examined "Sarge."

3. Dr. Mercer’s veterinary medical records for her neuter procedure of “Sarge” on November 14, 2006 did not include: the concentration and routes of administration for each drug prescribed, administered, and/or dispensed to “Sarge;” and details necessary to substantiate her examination,
diagnosis, surgery, and treatment of "Sarge."

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 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board’s Rules of Professional Conduct, 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 similar communities.

3. Based on the above Findings of Fact, Respondent has violated Rule 573.52 PATIENT RECORD KEEPING, which requires veterinarians to maintain records which include other details necessary to substantiate the examination, diagnosis, and treatment provided, and/or surgical procedure performed as well as the concentration and routes of administration for each drug prescribed, administered, and/or dispensed.

4. Based on the above Findings of Fact 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:

(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;

Agreed Order 2011-65
Melanie Mercer, D.V.M.
(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 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 Section 801.408 of the Veterinary Licensing Act,
Texas Occupations Code.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Melanie
Mercer, D.V.M., receive a FORMAL REPRIMAND.

In addition, the Board ORDERS that Melanie Mercer, D.V.M. complete an additional THREE
(3) hours of continuing education in recordkeeping as well as an additional THREE (3) hours of
continuing education in small animal surgery. Documentation of the completion of the
continuing education penalty shall be received within thirty (30) days of the end of the period to
complete the continuing education. If Respondent fails to provide documentation of completion
within forty-five (45) days of the end of the period to complete the continuing education, further
enforcement action will be taken.

The Board further ORDERS that Respondent pay, within 30 days of the date of this Order, and
administrative penalty in the amount of FIFTEEN HUNDRED DOLLARS ($1500.00). 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 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.

Agreed Order 2011-65
Melanie Mercer, D.V.M.
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 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, MELANIE MERCER, 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.

Melanie Mercer, D.V.M.  
6/18/13  
Date

STATE OF TEXAS  
COUNTY OF Dallas

BEFORE ME, on this day, personally appeared MELANIE MERCER, 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 16th day of June, 2013.

Notary Public

Agreed Order 2011-65  
Melanie Mercer, D.V.M.
SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 16th day of JUly, 2013.

[Signature]

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