

Received

AUG 22 2016

IN THE MATTER OF

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TEXAS BOARD OF

THE LICENSE OF

§

VETERINARY

Texas State Board of
Veterinary Medical Examiners

JON MICHLER, D.V.M.

§

MEDICAL EXAMINERS

AGREED ORDER

On this the 18 day of Oct., 2016, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Jon Michler, D.V.M. ("Respondent"). Pursuant to Section 801.408 of the Texas Occupations Code, and Board Rule 575.29, an informal conference was held on July 18, 2016. Respondent attended the informal 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 understanding the alleged violations and the adequacy and sufficiency of the notice provided.

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, Jon Michler, D.V.M. of Jasper, Texas, holds Texas veterinary license 10037.
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 October 15, 2015, Franklin Peebles presented his five-month-old kitten, Murderface, to Dr. Michler for neutering, deworming, and vaccines. On October 16, a pre-operative exam was performed, and Murderface was found to be within normal limits with a slightly fractious attitude. Pre-anesthetic bloodwork was not performed. Metacam was given orally. The use of

oral Metacam in cats does not have an established safety record, and Dr. Michler did not inform the client that the off-label usage of Metacam could pose a risk to the health of the patient. Murderface was sedated with ketamine/xylazine, and a prophylactic dose of penicillin was administered subcutaneously. Murderface was prepared for surgery and surgery was completed.

4. Murderface was discharged on October 16 in a noticeably uncoordinated state, somewhat lethargic, and vomiting any food and water he ingested.

5. Murderface's condition worsened with bloody diarrhea through October 18, 2015. He was taken to Best Friends Veterinary Hospital for examination by Dr. Lynnette Bihl. He was found to be dehydrated with dark red blood on the fecal loop, dry, tacky, pale gingiva, and a weight of seven pounds. He was hypothermic at 96.3 degrees and had ulceration in the oropharynx. He was unable to stand due to ataxia. A complete blood count, blood chemistry, and blood electrolytes were performed, revealing uremia hyperphosphatemia. Murderface was placed on intravenous fluids, and was given an antiemetic, a phosphate binder, and famotidine.

6. That evening, Dr. Bihl advised Mr. Peebles to transfer Murderface to the Animal Emergency and Urgent Care Center for overnight intensive care. He was transferred to Animal Emergency and Urgent Care of The Woodlands, and was reexamined by Best Friends on October 19, 2015. The October 19 examination by Dr. Neal Bernstein revealed abdominal sensitivity. Dr. Bernstein also performed radiographs and had them reviewed via IDEXX. IDEXX concluded that there was free gas and fluid in the abdomen that is most consistent with gastrointestinal perforation.

7. Because Murderface had not improved and recovery was unlikely, Mr. Peebles elected to have Murderface humanely euthanized on October 19, 2015.

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 CARE, of the Board's Rules of Professional Conduct, by administering oral Metacam to a cat and, thus, failing to exercise the same degree of humane care, skill, and diligence in treating patients as are 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 573.45, EXTRA-LABEL OR OFF-LABEL USE OF DRUGS, of the Board's Rules of Professional Conduct; by administering off-label a medication whose off-label usage does not have an established safety

record and by failing to inform the client that the off-label usage could pose a risk to the health of the patient.

4. Based on Findings of Fact 1 through 7 and Conclusions of Law 1 through 3, Respondent has violated Sections 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 practice 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: (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.

6. Based on the above Conclusions of Law, 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.

7. Based on the above Conclusions of Law, Respondent may be required to provide restitution to the client as set out in Section 801.408(e), INFORMAL PROCEEDINGS.

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 a FORMAL REPRIMAND.

The Board further ORDERS that Respondent pay restitution to Franklin Peebles in the amount of forty dollars (\$40.00). Proof of restitution SHALL be provided to the Board no later than forty-five (45) days from the effective date of this Order.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of ONE THOUSAND DOLLARS (\$1,000.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, which is the date this Order is signed by the Board, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

In addition, the Board ORDERS that Respondent complete THREE (3) hours of continuing education in the area of pharmacology, in addition to the seventeen required annually for renewal of Respondent's license to practice veterinary medicine, within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received within thirty (30) days after one year of the date the Board approves this Order. If Respondent fails to provide documentation of completion within thirty (30) days of one year of the date the Board approves this Order, Respondent's license may be suspended until the continuing education penalty is completed and documentation is received by the Board.

The Board further ORDERS that:

1. Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, the laws of the State of Texas, and the laws of 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.

Respondent, by signing this Agreed Order, acknowledges understanding the Agreed Order, the notice, and Findings of Fact and Conclusions of Law 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 the right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges having understood 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.

Signature page follows.

I, JON MICHLER, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT 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.

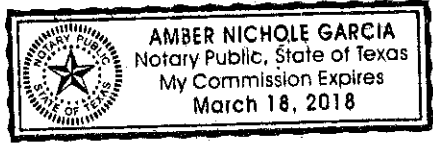
[Signature]
JON MICHLER, D.V.M.

8-19-2016
DATE

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, on this day, personally appeared Jon Michler, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me executing the same for the purposes stated therein.

Given under the hand and seal of office this 19 day of August, 2016



Amber Garcia
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 18 Oct, 2016.

[Signature]
Roland Lenarduzzi, D.V.M., Board President