DOCKET NO. 2009-02

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
LARRY B. MILLER, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 12, day of February, 2009, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board"), the matter of the license of Larry Miller, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.29, an informal settlement conference was held on October 17, 2008. Respondent appeared at the 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 his understanding of the alleged violations and the adequacy and sufficiency of the notice provided to him.

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 February 18, 2008, Ms. Nanette Sells, Taylor Texas, presented “Smokey”, a nine-month old male cat to Larry Miller, D.V.M., Taylor, Texas, of Taylor Veterinary Hospital, for a possible ringworm infestation.

2. Dr. Miller examined “Smokey” and collected a hair sample for a culture. Dr. Miller recommended “Smokey” be bathed and dipped and allowed to soak for fifteen minutes. Dr. Miller dipped “Smokey.” Dr. Miller elected to let “Smokey” drip dry in order to allow the maximum time for the dip to treat the fungus. Dr. Miller placed “Smokey” dripping wet in an outdoor cage under a covered patio in approximately 55-degree weather. When Ms. Sells arrived at approximately 5:00 p.m. “Smokey” was still wet. Ms. Sells noticed “Smokey” was shivering, and was breathing loud with a gurgling sound. Dr. Miller opined that the cat may have been allergic to the dip, or contracted pneumonia. Dr. Miller administered an antibiotic and an antihistamine. Ms. Sells was sent home with
antibiotics for bacterial pneumonia and a diuretic.

3. The labels on the medications sent home with “Smokey” lacked the veterinarian's name, telephone number, species of the animal treated, strength and quantity of the drug dispensed.

4. Dr. Miller invoiced, and Ms. Sells paid, $137.30 for the services rendered on February 18, 2008.

5. Dr. Miller's placement of a wet cat outdoors to dry in cold weather 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 Taylor, Texas or similar communities.

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 Paragraphs 1, 2, 4 and 5, Dr. Miller has violated Rule 573.22 PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board's Rules of Professional Conduct.

3. Based on Paragraph 3, Dr. Miller has violated Rule 573.40 LABELING OF MEDICATIONS DISPENSED, of the Board's Rules of Professional Conduct.

4. Based on the above paragraphs, Dr. Miller has violated section 801.402 of the Veterinary Licensing Act, Occupations Code, which prohibits practices which violate Board rules of professional conduct and subjects a veterinarian to disciplinary action under section 801.401.

5. Based on Findings of Fact 1-5 and Conclusions of Law 2 and 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.

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6. Based on Conclusions of Law 2 and 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:

(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.

7. Based on Conclusions of Law 2, 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 Larry Miller, D.V.M., be INFORMALLY REPRIMANDED. The Board further ORDERS Larry Miller, D.V.M., to pay, within 30 days of the date of this Order, RESTITUTION of ONE HUNDRED AND THIRTY-SEVEN DOLLARS AND THIRTY CENTS ($137.30). 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.

Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that
he 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 his right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that he 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, LARRY MILLER, 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.

Larry Miller, D.V.M.

5 Nov 08

Date

STATE OF TEXAS  §
COUNTY OF Williamson §

BEFORE ME, on this day, personally appeared LARRY MILLER, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 5th day of November, 2008

Sherri Maldenhour
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 12 day of FEB, 2009.

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

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