DOCKET NO. 2012-89

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

AGREED ORDER

On this the 30th day of October, 2012, came to be considered by the Texas Board of Veterinary Medical Examiners (Board) the matter of the license of Frank Moffett, D.V.M. (Respondent). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on July 23, 2012. Respondent attended the conference and was represented by counsel, Joe Kahla. 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. Respondent, Frank Moffett, D.V.M. of Dilly, Texas, holds Texas veterinary License 2265.

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).

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4. Between October 5, 2009 and March 24, 2010, Respondent dispensed 1,001 bottles of Telazol. On his outgoing controlled substance log for Telazol, Respondent failed to keep track of the balance on hand throughout this period. In each of the entries in Respondent’s controlled substance log for Telazol during this period, Respondent recorded “Dart Deer” as the reason for dispensing.

5. Respondent stated that he had provided Telazol to clients for the darting of deer, and that his clients “know more about the proper dosage [of Telazol for darting deer] than I ever will.”

6. In response to a request from the Board for patient records reflecting the Telazol that Respondent dispensed during this period, Respondent provided copies of six pages from his calendar. While the pages on the calendar indicate when Respondent met with certain clients, the calendar pages do not provide contact information for the client, identify the patient, identify any drugs dispensed or indicate any dosage, or include any details to substantiate or explain the reasons Respondent dispensed Telazol for the patient. The records do not provide any indication that Respondent established a veterinarian-client-patient relationship with the herds in question prior to dispensing the Telazol.


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 Findings of Fact 1 through 7, Respondent has violated Rule of Professional Conduct 573.4, ADHERENCE TO LAW, of the Board’s Rules of Professional Conduct, by violating 21 U.S.C. §842 by failing to maintain all required information in his controlled substance logs for Telazol, and by distributing Telazol without valid prescriptions created through a diagnosis determined under an established veterinarian-client-patient relationship.

3. Based on Findings of Fact 1 through 7, Respondent has violated Rule of Professional Conduct 573.40, LABELING OF MEDICATION DISPENSED, by failing to provide dosage and other instructions for use to the client when dispensing Telazol.

4. Based on Findings of Fact 1 through 7, Respondent has violated Rule of Professional Conduct 573.41, USE OF PRESCRIPTION DRUGS, by prescribing, dispensing, delivering, or ordering delivered a prescription drug without first having established a veterinarian-client-
patient relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-being of the animals.

5. Based on Findings of Fact 1 through 7, Respondent has violated Rule of Professional Conduct 573.50, CONTROLLED SUBSTANCES RECORD KEEPING FOR DRUGS ON HAND, of the Board’s Rules of Professional Conduct, by failing to record the balance on hand for each entry in the outgoing controlled substance log for Telazol.

6. Based on Findings of Fact 1 through 7, Respondent has violated Rule of Professional Conduct 573.52, PATIENT RECORD KEEPING, by failing to record required information in patient records, including the name, address and phone number of the client; the identification of the patient, including name, species, breed, age, sex and description names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed; and other details necessary to substantiate the examination, diagnosis, and treatment provided.

7. Based on Findings of Fact 1 through 7 and Conclusions of Law 1 through 6, Respondent has violated Sections 801.402 (4) and (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:

4) engages in dishonest or illegal practices in, or in connection with, the practice of veterinary medicine...

6) engages in practices or conduct that violates the board’s rules of professional conduct.

8. Based on Conclusions of Law 1 through 5, 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.

(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.

9. Based on Conclusions of Law 1 through 7, 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 a FORMAL REPRIMAND.

The Board further ORDERS that Respondent’s license be SUSPENDED for FIVE YEARS, with said SUSPENSION STAYED and Respondent placed on PROBATION for the entire period of SUSPENSION.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of FIVE THOUSAND DOLLARS ($5000.00). If Respondent fails to pay the administrative penalty within 45 days of the date of this Order, Respondent’s license may be suspended until the penalty is paid.

The Board ORDERS that Respondent attain approval from the Board prior to renewing or otherwise acquiring controlled substance certification from either the Texas Department of Public Safety or the United States Drug Enforcement Administration.

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.

Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law 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. 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, FRANK MOFFETT, 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.

\[Signature\]
FRANK MOFFETT, D.V.M.

\[Date\]
\[5-23-12\]

STATE OF TEXAS
COUNTY OF \[County\]  

BEFORE ME, on this day, personally appeared Frank Moffett, 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.

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Frank Moffett, D.V.M.
Given under the hand and seal of office this 23rd day of August, 2012.

Patricia Maldonado
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 30th day of October, 2012.

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