DOCKET NO. 2010-43

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
VANCE W. MURPHY, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 23rd day of March, 2010, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Vance W. Murphy, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on January 6, 2010. The Respondent was represented by counsel, Lucas Mauro. 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 2, 2009, Tom Worthen's son, Jason Worthen, presented his ten year-old Labrador Retriever, "Rusty" to Vance W. Murphy, D.V.M. of Clear Lake City Veterinary Clinic, Seabrook, Texas, for vomiting and breathing problems.

2. Dr. Murphy examined "Rusty" and recommended radiographs, a blood panel and a heartworm test. The diagnostics were performed on February 3, 2009, which disclosed "Rusty" was positive for heartworms. Dr. Murphy also diagnosed laryngeal paralysis (however this is not noted in the medical records), noted difficulty breathing ("sounds like Darth Vader") and an enlarged right side of the heart. Heartworm treatment with an imidacloprid (4cc) was started on February 9, 2009. "Rusty" was kept overnight at the clinic. On the morning of February 10, 2009, "Rusty" was observed to have tapeworms in his stool, so "Rusty" was given a dewormer tablet. Two hours later, "Rusty" began vomiting. There were no notations of "Rusty's" breathing. However, Dr.
Murphy states that "Rusty" had "his normal breathing, which was laryngeal paralysis breathing. Despite this reaction, Dr. Murphy gave a second injection of the inmiticide on February 10, 2009. One hour later, the dog began experiencing respiratory distress, so Dr. Murphy administered an injection of Dexamethasone. One to one and one-half hours later, Dr. Murphy did not notice any change, so he administered 1 cc of Diazepam intramuscular to his back hip. "Rusty" was given another injection of Dexamethasone, approximately two hours later. Dr. Murphy placed an endotracheal tube to assist in breathing. "Rusty" had a cardiac arrest, and Dr. Murphy performed successful CPR. However, "Rusty" arrested again and died.

3. According to the "Treatment Record With Inmiticide," on the subjective assessment, Dr. Murphy checked "occasional cough," a 2A symptom. Under the objective assessment, Dr. Murphy checked "RV enlargement or RV and RA enlargement," a 3B symptom. According to the next section, with Dr. Murphy checking a 2A symptom and a 3B symptom, "Rusty" was classified as a Class 3, not a Class 1 as Dr. Murphy assessed. According to the "Treatment Record With Inmiticide," a Class 3 patient should be treated with a single injection of inmiticide and then wait a month before the second injection of inmiticide. Instead, Dr. Murphy treated "Rusty" with the strongest dosage of inmiticide as permitted. However, Dr. Murphy provided restitution to the client and has no history of prior violations with the Board. These are mitigating circumstances in this case.

4. Dr. Murphy's medical records regarding "Rusty" did not have sufficient details to substantiate the examination, diagnosis, and treatment provided, including a lack of diagnosis of laryngeal paralysis, no notations of referral, and no notations regarding the dog's breathing after the initial assessment.

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 3, 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 Findings of Fact 1 and 4, Respondent has violated Rule 573.52 PATIENT RECORD KEEPING, which requires veterinarians to provide other details necessary to substantiate the examination, diagnosis, and treatment provided by the veterinarian.

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4. Based on Finding of Fact 1 through 4 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;
(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.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Vance W. Murphy, D.V.M., be INFORMALLY REPRIMANDED.

In addition, the Board ORDERS that Vance W. Murphy, D.V.M. complete an additional SIX (6) hours of continuing education total, THREE (3) in recordkeeping and THREE (3) in respiratory/heartworm disease within one year of the date of this order. 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.

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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. 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, VANCE W. MURPHY, 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.

Vance W. Murphy, D.V.M.

Date

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, on this day, personally appeared VANCE W. MURPHY, 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 19th day of January, 2010

LORIE LEE REYES
Notary Public, State of Texas
My Commission Expires APRIL 05, 2010

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 22nd day of March, 2010.

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

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