

DOCKET NO. 2012-96

IN THE MATTER OF	§	TEXAS BOARD OF
THE LICENSE OF	§	VETERINARY
JOE NEFF, 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 Joe Neff, 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, Robert Porter. 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.

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, Joe Neff, D.V.M. of Big Spring, Texas, holds Texas veterinary License 2143.
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 26, 2010, Respondent conducted Brucellosis testing on cattle at the Western Livestock Auction in Midland, Texas. Respondent claimed to have drawn blood from 65 head of cattle and card-tested the samples for Brucellosis with negative results.

4. Respondent then submitted the blood samples to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) in Lubbock, Texas, where two of the samples tested positive for Brucellosis.
5. Serum samples from the blood samples Respondent submitted to TVMDL were forwarded to the National Veterinary Science Laboratories (NVSL) in Ames, Iowa for antibody profile tests to determine the identities of individual animals represented by the blood samples. The antibody tests revealed that the two samples that tested positive for Brucellosis both came from the same cow, although Respondent had identified them as coming from two separate cows, with ear tag numbers 1235 and 1237 respectively.
6. An investigator for the United States Department of Agriculture (USDA) tracked the cows with ear tag numbers 1235 and 1237, and retested them for Brucellosis. While the cow with ear tag number 1237 tested positive for Brucellosis, the cow with ear tag 1235 tested negative.
7. Respondent later admitted that he had not performed a card test for the Brucellosis-positive cow and several other cattle that came in late, and had instead falsified the card test form.
8. On January 14, 2011, Dr. Pete Fincher, Texas Animal Health Commission Area 6 Regional Director, went to Big Springs Livestock Market where Respondent was performing Brucellosis testing on cattle prior to sale. The Texas Animal Health Commission Inspector on site, Bobby McElroy, admitted to Dr. Fincher that he had witnessed Respondent only testing every other cow for Brucellosis.
9. Dr. Fincher collected the 228 blood samples and the card tests that Respondent had collected and completed for the cattle at the Big Springs Livestock Market. Dr. Fincher then required Respondent to retest all 228 head of cattle at the Big Springs Livestock Market, with the assistance and supervision of Texas Animal Health Commission personnel.
10. Dr. Fincher forwarded the original blood samples Respondent took from the cattle at the Big Springs Livestock Market to NVSL for antibody profile testing to determine whether any of the blood samples came from the same cow. The antibody profile testing showed that every other sample had the same antibody profile as the sample that came before it, consistent with Respondent drawing blood from every other cow and duplicating or splitting the samples.
11. The original samples Respondent took at the Big Springs Livestock Market were then sent to the Veterinary Genetics Laboratory in Davis, California for DNA testing, and the results of DNA tests on ten sequential samples showed that every other sample had the same genetic profile as the sample before it, consistent with Respondent drawing blood from every other cow and duplicating or splitting the samples.

12. At the informal conference, Respondent further admitted that he had decided to bleed every other cow at the Big Springs Livestock Market on January 14, 2011 because it was cold and there was no light at the bleeding chute, so he wanted to make sure he was finished before dark.

13. According to USDA records, Respondent allegedly tested 26,428 head of cattle for Brucellosis in 2009 and 2010. An investigator for the United States Department of Agriculture checked USDA for requests for the antigen used in card test for Brucellosis and determined that in 2009 and 2010, Respondent had only requested six boxes of antigen—only enough to test 3,000 head of cattle for Brucellosis. Even including the antigen that Respondent had on hand in addition to the antigen he ordered, Respondent only had enough antigen in 2009 and 2010 to card test a total of 16,500 head of cattle.

14. On April 6, 2011, the Texas Animal Health Commission notified Respondent that his Approved Personnel Status was revoked.

15. On March 28, 2012, Respondent consented to the revocation of his veterinary accreditation in lieu of further proceedings by the USDA.

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 16, Respondent has violated Rule 573.4 ADHERENCE TO THE LAW, of the Board's Rules of Professional Conduct, which requires that no licensed veterinarian shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the veterinarian's practice of medicine, in that Respondent violated 9 CFR §§161.3-161.4 by failing to complete Brucellosis testing on cattle correctly as required by the USDA, by collecting blood only from every other animal, and by failing to perform card testing.

3. Based on Findings of Fact 1 through 16 and Conclusions of Law 1 through 4, 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.

4. 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: (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.

5. Based on Conclusions of Law 1 through 5, 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 TWO YEARS.

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, JOE NEFF, 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.

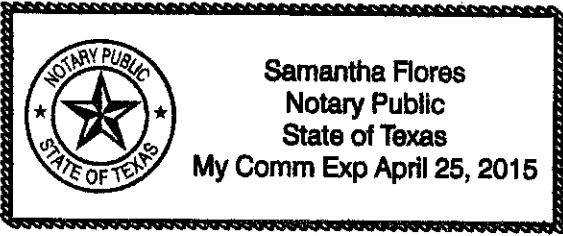
Joe Neff, D.V.M.
JOE NEFF, D.V.M.

4-10-2013
DATE

STATE OF TEXAS §
COUNTY OF Howard §

BEFORE ME, on this day, personally appeared Joe Neff, 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 10 day of April, 2013



Samantha Flores
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 16th of July, 2013.

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