DOCKET NO. 2004-02

IN THE MATTER OF $ TEXAS STATE BOARD OF $ VETERINARY MEDICAL EXAMINERS

THE LICENSE OF $ ANNE P. Osher, D.V.M. $

AGREE ORDER

On this the 19th day of February, 2004 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Anne P. Osher, D.V.M ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on October 14, 2003. The Respondent appeared with counsel. 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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 August 8, 2002, Suzanne Daigle presented her female dog “Sugar” to the Animal Birth Control Clinic, Houston, Texas for a spay. Anne P. Osher, D.V.M., a relief veterinarian, examined the dog, found no abnormalities, and performed the procedure. During surgery, the dog was placed on a heating pad to raise the dog’s temperature. The dog suffered burns from the heating pad. These burns were pointed out to Dr. Osher when Ms. Daigle returned “Sugar” to the clinic on August 12th or 13th.

2. Ms. Daigle returned the dog to Dr. Osher for examination and treatment on August 15th. On August 17th, Ms. Daigle took “Sugar” to Banfield the Pet Hospital for a second opinion. On August 19th, Ms. Daigle again presented the dog to Dr. Osher. At that time, Dr. Osher gave Ms. Daigle a check for the cost of the spay and the visit to the Banfield clinic. She also provided medications to Ms. Daigle at no cost to Ms. Daigle.

3. Over the next few weeks, Dr. Osher saw “Sugar” every few days. During all visits, “Sugar” was Dr. Osher’s patient. Ms. Daigle was not charged for medical care during this period. After a period of weeks, Ms. Daigle ceased coming to the clinic.
4. The patient records maintained by Dr. Osher are incomplete. Only entries for the spay on August 8, 2002 and a consultation on August 19, 2002 were noted in records supplied to the Board. Other dates of visits and details of treatments were not noted in the records.

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 3 and 4, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board’s Rules of Professional Conduct, which requires that records contain dates of visits and other details necessary to substantiate the examination and treatment provided.

3. Based on Findings of Fact 3 and 4 and Conclusions of Law 1 and 2, 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.

4. Based on Conclusions of Law 1 through 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 a civil penalty.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Anne P. Osher, D.V.M., be INFORMALLY REPRIMANDED.

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 her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that she 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she is 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, ANNE P. Osher, 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.

Anne P. Osher, D.V.M.

11/6/03

Date
STATE OF TEXAS
COUNTY OF Harris

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

Given under my hand and seal of office this 10 day of November, 2003.

[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19th day of February, 2004.

[Signature]
Dee Pederson, D.V.M., President