DOCKET NO. 2014-172

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

MER TEN PEARSON, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 21st day of October, 2014, came on to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of MERTEN PEARSON, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.29, an informal conference was held on September 15, 2014. Respondent attended the informal conference and was not represented by 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 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, MERTEN PEARSON, D.V.M. of Amarillo, Texas, holds Texas veterinary License 7388.

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 September 7, 2013, Mr. Gary Barnes took Riley, his six year old Shih Tzu canine to Respondent at the Hospital for a teeth cleaning. Riley was discharged at approximately 5:00 p.m. the same day. After arriving home, Mr. Barnes observed Riley had difficulty walking and appeared to be in pain. Mr. Barnes further discovered that Riley’s stomach and thighs were bright red and blistered. Mr. Barnes was unable to contact Respondent that evening as the Hospital had closed.

4. Mr. Barnes was able to contact the Hospital after September 7th and was told that heat lamps were not used to keep patients warm. Mr. Barnes informed the Hospital staff that Riley appeared to have burns.

5. On September 12, 2013, Mr. Barnes took Riley to Janice Turek Wolf, D.V.M. at Canyon Roan Hospital. Dr. Wolf prescribed antibiotics and pain medications for burns. Riley’s stomach and thighs continued to worsen as he developed large blisters.

6. On or about September 18, 2013, Mr. Barnes attempted to see Respondent; however, Hospital staff told him that he must schedule an appointment. Mr. Barnes left and later returned on September 25, 2013. At that time he waited at the Hospital until Respondent would see him. Respondent apologized at that time and informed him that a Hospital staff person used a hair dryer on Riley’s stomach to keep him warm and had burned him.

7. Respondent paid for two visits Riley had with Dr. Wolf.

8. Mr. Barnes states that Respondent did not inform him of the burning with the hair dryer until after Mr. Barnes went to the Hospital and waited to be seen days after the incident.

9. For four weeks after the incident, Riley still had large black scabs and open sores on his stomach.

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 the above paragraphs, Respondent has violated Rule 573.22 PROFESSIONAL STANDARD OF CARE, by allowing his non-veterinarian employee to burn a patient with a hair dryer while that employee was supposed to be keeping the animal warm while it was under anesthesia. Respondent is responsible for the actions of his non-veterinarian employees during the course of their employment under Board Rule 573.11.

3. Based on the above paragraphs, Respondent has violated Rule 573.10 SUPERVISION OF NON-VETERINARIANS, by failing to properly supervise his non-veterinarian employee in the performance of a delegated duty. Respondent is responsible for the actions of his non-
veterinarian employees during the course of their employment under Board Rule 573.11.

4. Based on 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.

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, 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.

Agreed Order 2014-172
MERTEN PEARSON, D.V.M.
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, MERTEN PEARSON, 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.

MERTEN PEARSON, D.V.M.  

Date 14 Oct 2014

STATE OF TEXAS §
COUNTY OF Kendall §

BEFORE ME, on this day, personally appeared MERTEN PEARSON, 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 14th day of October, 2014.

Notary Public

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MERTEN PEARSON, D.V.M.
SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 21 day of October, 2014.

Bud E. Alldredge, Jr., D.V.M.
President of the Board