DOCKET NO. 578-95-0866

IN THE MATTER OF THE
COMPLAINT BY THE TEXAS
STATE BOARD OF VETERINARY
MEDICAL EXAMINERS AGAINST
NORMAN C. RALSTON, D.V.M

BEFORE THE TEXAS
STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

FINAL ORDER OF THE BOARD

During a duly noticed open meeting in Austin, Texas, the Texas State Board of Veterinary Medical Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas State Board of Veterinary Medical Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as are fully set out and separately stated herein. All proposed findings of fact and conclusions of law not specifically adopted herein are hereby denied.

I. FINDINGS OF FACT

1. On September 30, 1996, notice was mailed via U.S. Certified Mail, Return Receipt Requested, to Norman C. Ralston, D.M.V., ("Respondent") notifying him that a hearing on the complaint filed against him by the Texas State Board of Veterinary Medical Examiners ("Board") would be held on November 7, 1996, at the State Office of Administrative Hearings in Austin, Texas.
2. Notice of the original complaint against Respondent was mailed to him on May 19, 1995, and notice of the First Amended Complaint was mailed to him on June 4, 1996; both mailings were via U.S. Certified Mail, Return Receipt Requested.

3. On January 20, 1994, Respondent and Ron Allen executed a “Negotiated Settlement” which resulted from one or more past complaints against Respondent; the Negotiated Settlement was accepted by the Board on February 2, 1994.

4. The Negotiated Settlement contains the following condition: “Dr. Ralston will obtain specific written consent to use alternate therapies from any client on whose animal they are used. The document shall be signed and retained in the client’s file.”

5. On March 26, 1994, Respondent treated Lisa Huckaby’s cat with homeopathic remedies without obtaining specific written consent.


7. As part of the Negotiated Settlement accepted by the Board on February 2, 1994, Respondent was found to have violated Board Rule 573.63 by refusing to allow a Board Investigator to inspect and/or copy client/patient records. Such violation was within 36 months of the facts set out in Findings of Fact Nos. 5 and 6.

8. Respondent holds Veterinary License Number 980.
II. CONCLUSIONS OF LAW

1. Proper and timely notice of the hearing was served on Respondent, pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001 et seq. (Vernon Pamphlet 1996), 22 TEX ADMIN. CODE 575 and 1 TEX ADMIN. CODE 155 et seq.

2. The Board has jurisdiction over this matter pursuant to Section 14 of the Veterinary Licensing Act, TEX. REV. CIV. STAT. ANN. Art. 8890 (the “Act”).

3. The hearing in this matter was conducted according to the requirements of the Administrative Procedure Act (TEX. GOV'T CODE ANN. § 2001 et seq.), the rules of the State Office of Administrative Hearings (1 TEX. ADMIN. CODE 155 et seq.) and the rules of the Board regarding practice and procedure (22 TEX. ADMIN. CODE 575).

4. Based on Findings of Fact Nos. 3-6, Respondent violated 22 TEX. ADMIN. CODE 573.62 by violating a settlement with the Board.

5. Based on Conclusion of Law No. 4 and Findings of Fact Nos. 3-8, Respondent’s actions constitute a Class B violation pursuant to 22 TEX. ADMIN. CODE 575.25(b).

6. Based on the Findings of Fact and Conclusions of Law, suspension of Respondent’s license to practice veterinary medicine for one year, with all but thirty days of the suspension period probated, and imposition of $1,000.00 civil penalty is justified.

NOW, THEREFORE, IT IS ORDERED by the Texas State Board of Veterinary Medical Examiners pursuant to TEX. REV. CIV. STAT. ANN. art. 8890 § 14 that Veterinary License No. 980 held by Norman C. Ralston, D.V.M., be and the same is hereby suspended for a period of one year, all of which is probated but for the first thirty (30) days. In addition, a civil penalty of one thousand
dollars ($1,000.00) is assessed against Norman C. Ralston. The Board's order shall become effective the date the order is approved by a vote of a majority of the Board members.

Signed and entered by the presiding officer of the Texas State Board of Veterinary Medical Examiners at Austin, Texas, on this the 12th day of June, 1997.

TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

JAMES N. GOMEZ, D.V.M.
President
DOCKETED COMPLAINT NO. 1995-11

TEXAS STATE BOARD OF VETERINARY § TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS § LICENSE NO. 980
vs. § 1995 RENEWAL CERTIFICATE
NORMAN C. RALSTON, D.V.M. § NUMBER 1728

COMPLAINT AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared Matthew Wendel, who after being duly sworn, did depose and say:

On or about May 5, 1994, Matthew Wendel, being an employee of the Texas State Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one Norman C. Ralston, D.V.M., 12500 Lake June Road, Mesquite, Texas 75180, Veterinary License Number 980, 1995 Renewal Certificate Number 1728, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, Matthew Wendel, do hereby present the following complaint against Norman C. Ralston, D. V. M.

I.

On or about March 26, 1994, Lisa Huckaby presented her female cat “Scooter” along with her kittens, to the LBJ Animal Clinic. Scooter was presented for a fecal examination and the kittens with crusty eyes and sneezing.
Dr. Ralston's assistant held Scooter in one hand and held her other hand outstretched while Dr. Ralston pushed her arm down twice. Dr. Ralston dispensed a homeopathic remedy, Chamomilla, for the kittens eyes.

Ms. Huckaby said that she was not informed that Dr. Ralston practiced alternative medicine and Dr. Ralston did not obtain specific written consent that he uses alternate therapies, including acupuncture and homeopathic remedies.

On or about April 26, 1994, Joy Cisco took her 13 year old cat "Daisy", to the LBJ Animal Clinic. Dr. Ralston made a diagnosis of borderline diabetes and determined appropriate treatment by the technician placing his hand on the cat and another technician pulling down the technicians other arm. Dr. Ralston dispensed the homeopathic remedies Hydrastis, Iris flower essence, and cell salts. Dr. Ralston did not inform Mrs. Cisco that he practiced homeopathic or alternative medicine and did not obtain specific written consent that he uses alternate therapies, including acupuncture and homeopathic remedies.
V.

On or about April 27, 1994, Joy Cisco took her cat Daisy to another veterinarian that examined her, diagnosed diabetes and recommended a treatment of insulin for the cat's condition.

VI.

On or about February 2, 1994, Dr. Ralston entered into a negotiated settlement with the Board. One of the conditions of the settlement required that Dr. Ralston obtain specific written consent from any client to use alternate therapies, including acupuncture and homeopathic remedies, on the animal presented. The document is required to be signed and retained in the client's file.

VII.

By failing to obtain written consent to use alternate therapies from Lisa Huckaby as described in paragraphs I through III, and from Joy Cisco as described in paragraphs IV and V, before treating their animals with alternate therapies, Dr. Ralston violated Rule of Professional Conduct 573.62 - Violation of Board Orders/Negotiated Settlements, and Section 14 (a) (5) of the Veterinary Licensing Act, Article 8890.
ARTICLE 8890, SECTION 14

(a) . . . the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a licensee . . . if it finds that a licensee:

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with a law;
ARTICLE 8890, SECTION 14B

(a) If a person violates this act in a manner that constitutes grounds for disciplinary action by the Board, the Board may assess an administrative penalty against that person in addition to taking action under Section 14 or 14A of this Act.

The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 16th day of May, 1995.

Further, Affiant sayeth not.

Matthew Wendel, Affiant

SUBSCRIBED and SWORN TO before me by the said Matthew Wendel this the 16th day of May, 1995.

Charles A. Adkins, Notary Public in and for Texas
The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. Norman C. Ralston, D.V.M. under Docketed Number 1995-11 this the 17th day of May, 1995.

James N. Gomez, D.V.M., Board Secretary
Texas State Board of Veterinary Medical Examiners
State Office of Administrative Hearings

Sheila Bailey Taylor
Chief Administrative Law Judge

January 28, 1997

Ron Allen
Executive Director
Texas State Board of Veterinary Medical Examiners
333 Guadalupe, Tower II, Suite 330
Austin, Texas 78701

HAND DELIVERY

RE: Docket No. 578-95-0866; In The Matter Of Norman C. Ralston, D.V.M.

Dear Parties:

Please find enclosed the Proposal for Decision and proposed Final Order that have been prepared for the consideration of the Texas State Board of Veterinary Medical Examiners in the above referenced case. Copies of the proposal for decision and the proposed order have been sent to Lynn Bey-Roode, Assistant Attorney General, and Norman C. Ralston, D.V.M., Respondent in this matter. For reasons discussed in the proposal for decision, I have recommended suspension of Respondent's license to practice veterinary medicine for one year, with all but thirty days of the suspension period probated, and imposition of a $1,000.00 civil penalty is justified.

By copy of this letter, I am informing the parties that under TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1997), each party has the right to file exceptions to the proposal for decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the procedures and time limits set out by the Texas State Board of Veterinary Medical Examiners. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

Elizabeth R. Todd
Administrative Law Judge

ERT/mdl
Enclosure

cc: Rommel Corro, Docket Clerk, State Office of Administrative Hearings - HAND DELIVERY
    Lynn Bey-Roode, Assistant Attorney General, Office of the Attorney General - HAND DELIVERY
    Norman C. Ralston, D.V.M., 12800 Lake June Road, Mesquite, Texas 75180 - CERTIFIED MAIL
    NO. P 213 672 269, RETURN RECEIPT REQUESTED

William P. Clements Building
Post Office Box 13025 • 300 West 15th Street, Suite 302 • Austin Texas 78711-3025
(512) 475-4993  Docket (512) 475-3445  Fax (512) 475-4994
DOCKET NO. 578-95-0866

IN THE MATTER OF THE
COMPLAINT BY THE TEXAS
STATE BOARD OF VETERINARY
MEDICAL EXAMINERS AGAINST
NORMAN C. RALSTON, D.V.M.

TSBVME COMPLAINT NO. 1995-11

BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. SUMMARY

This complaint was filed by the Texas State Board of Veterinary Medical Examiners ("Board" or "Petitioner") against Norman C. Ralston, D.V.M., ("Respondent") a licensed practitioner of veterinary medicine in the State of Texas. The complaint alleges that Respondent violated the terms of a negotiated settlement and, in so doing, violated Rule of Professional Conduct 573.62 and Section 14 (a)(5) of the Veterinary Licensing Act, TEX. REV. CIV. STAT. ANN. Art. 8890 (the "Act"). Specifically, the complaint alleges that, after agreeing to obtain specific written consent prior to using alternate therapies, Respondent violated that agreement by using homeopathic remedies without obtaining the written consent of two clients. In closing arguments, Petitioner requests sanctions of license suspension for twelve months, with all but thirty days of that period probated, and a civil penalty of $1,000.00. Sufficient evidence of the allegations having been presented, the Administrative Law Judge ("ALJ") recommends that the requested sanctions be imposed.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

On November 7, 1996, a public hearing was held before Elizabeth R. Todd, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), at 300 West 15th Street, Austin, Texas. Petitioner was represented by Lynn Bey-Roode, Assistant Attorney General. Respondent appeared in person and represented himself.

On September 30, 1996, notice of the time and date of the hearing was mailed to the Respondent by the Docket Clerk of the State Office of Administrative Hearings ("SOAH") via U.S. Certified Mail, Return Receipt Requested. The date of the hearing had been mutually agreed upon by both parties. See State's Exhibit No. 1. Notice of the original complaint was mailed on May 19, 1995, and notice of the First Amended Complaint was mailed on June 4, 1996; both mailings were via U.S. Certified Mail, Return Receipt Requested. No objection to notice of the hearing or notice of the complaint was made by Respondent. Notice of the hearing and of the complaint met
all requirements of the Administrative Procedure Act (TEX. GOV'T CODE ANN. §2001 et seq.), the Board’s procedural rules (22 TEX. ADMIN. CODE 575) and SOAH’s procedural rules (1 TEX. ADMIN. CODE 155 et seq.).

Authority to revoke or suspend a license issued under the Act is vested with the Board in Section 14 of the Act. That section empowers the Board to suspend or revoke licenses issued under the act if a licensee engages in practices or conduct which are violative of the standards of professional conduct as duly promulgated by the Board. TEX. REV. CIV. STAT. ANN. Art. 8890, Section 14(a)(5). In his Motion to Dismiss Complaint filed prior to the commencement of the evidentiary hearing, Respondent challenged the jurisdiction of the Board in this matter by asserting that use of homeopathic remedies is exempt from state regulation. He cited as authority “Section 3 paragraph (a)(D)[sic] of the VETERINARY LICENSING ACT ARTICLE 8890.” Review of the statute reveals, however, that the provision which Respondent quoted in his motion is actually Section 3(a)(2)(D) (emphasis added) which is limited in application to “accepted livestock management practices.” Section 573.65(1) of the Board rules defines “accepted livestock management practices” as “those involving animals raised or produced primarily for food, fiber, or other products for human consumption.” Since the facts of this case do not involve livestock, but rather Respondent’s treatment of pet cats brought to his clinic by clients, the quoted provision is not applicable to this matter. Furthermore, the Act grants specific authority to the Board to regulate the use of alternative therapies, including homeopathy. See Section 7(b) of the Act. Jurisdiction of this matter was therefore found to be properly vested with the Board.

III. DISCUSSION

A. Evidence Presented

1. Petitioner’s Evidence:

The evidence presented consisted of the testimony of one witness, Ernie Michael Carroll, Board Investigator, who sponsored several documents which were admitted into the record as exhibits. The most significant evidence offered in support of the complaint’s allegations consisted of a copy of the document titled “Negotiated Settlement” (marked and admitted as State’s Exhibit No. 2) and two letters received by the Board from Respondent (marked and admitted as State’s Exhibit Nos. 5 and 6).

The Negotiated Settlement was signed by Respondent and by Ron Allen, as Executive Director of the Board, and is dated January 20, 1994. Attached to the settlement is a signature page indicating that the agreement was accepted by the Board on February 2, 1994. Mr. Carroll testified that the settlement agreement came out of an informal conference held with Respondent after one or more complaints had
been filed against him. The settlement agreement summarizes the charges1 against Respondent at that time as follows:

Failure to advise a client that the treatment provided to their pet was a homeopathic remedy, and allowed the client to believe the medication was conventional and traditional. Refusal to allow a Board Investigator to inspect and/or copy client/patient records as outlined in Rule of Professional Conduct 573.63.

The disciplinary action recommended was an official reprimand and four conditions requiring action were enumerated. The second condition listed is the only one at issue in this proceeding and it reads as follows:

Dr. Ralston will obtain specific written consent to use alternate therapies from any client on whose animal they are used. The document shall be signed and retained in the client’s file.

The complaint which was filed initiating this action is based upon the allegation that Respondent violated this condition of the Negotiated Settlement subsequent to its execution.

Also introduced into evidence were two letters written by Respondent to the Board, State’s Exhibit Nos. 5 and 6. The letters are signed by the Respondent and indicate that they were written in reference to two cases pending before the Board. The letter marked Exhibit No. 5 references “Case # 94-095 - Lisa Huckaby” and is dated July 18, 1994. In the letter, Respondent states, in part, as follows:

... I saw “Scooter”, Lisa Huckaby’s cat on March 26th, 1994 and after a routine exam advised the owner and prescribed Hydrastis and Chamomilla which are homeopathic remedies specific for the symptomology presented... The woman did decline signing our form that explains about alternative therapies. ...

The letter marked Exhibit No. 6 references “Case 94-107 - Joy Cisco” and is dated July 29, 1994. The relevant parts of the letter reads as follows:

Joy Cisco came to our office on April 26, 1994 with her spayed female cat... The animal was examined and the appropriate homeopathic therapies were prescribed for the symptomology presented. She did decline to sign our alternative treatment form. ...

2. Respondent’s Evidence:

---

1 No testimony as to the specifics of the previous complaints were presented or considered relevant to the decision in this matter.
Respondent did not present any testimony or other evidence to explain or rebut any of the statements set out above and contained in the documents presented by Petitioner. The only evidence offered by Respondent was a letter from the Board stating the results of his taking of the Jurisprudence Exam. Respondent indicated that he was offering the letter only to establish that the Negotiated Settlement contained no time deadline. Since the agreement itself was in evidence, the letter was not admitted.

B. Applicable Law

The following authorities are applicable to the facts as presented by Petitioner:

- Section 8(a) of the Act
- 22 TAC § 573.62
- Section 14(a)(5) of the Act

Section 8(a) of the Act provides authority for the Board to adopt “rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.” Board Rule 573.62 (22 TEX. ADMIN. CODE § 573.62) reads in pertinent part as follows:

It will be considered unprofessional conduct for a licensee to violate a board order or negotiated settlement issued as a result of a docketed complaint against the licensee.

Section 14(a)(5) of the Act provides authority for the Board to revoke or suspend a license or impose a civil penalty upon a finding that a licensee “has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law.”

Authority for sanctions for violations such as those alleged in this matter is contained in 22 TEX. ADMIN. CODE 575.25(b). Class B violations specifically include engaging in veterinary practices which are violative of the Rules of Professional Conduct. Class B also violations include violations by licensees who have violated rules and/or statutes or have committed a Class C violation within the last 36 months. See 22 TEX. ADMIN. CODE 575.25(b). Maximum penalties for a Class B violation include one to 10-year suspension with none, all, or part probated and/or a penalty not exceeding $2,500 for each violation.

C. Application of Law to Facts

The facts as established by Petitioner demonstrate that Respondent has admitted that he treated animals with alternative therapies without obtaining written consent. Those actions violate the referenced condition of the Negotiated Settlement. Such a violation of a settlement agreement is defined as “unprofessional conduct” by Board Rule 573.62, promulgated under the authority of Section 8(a) of the Act.
Furthermore, pursuant to Section 14(a)(5) of the Act and Board Rule 575.25, the Board is authorized to impose the requested sanctions for such a violation.

In his closing argument, Respondent does not expressly challenge the fact evidence establishing that he treated animals with homeopathic therapies without written consent. Instead he challenges the constitutionality of Section 7(b) of the Act which provides authority for the Board to “adopt rules to protect the public and to ensure that the performance of alternate therapies, including . . . homeopathy . . . are performed only by a licensee or under the supervision of a licensee.” However, neither that provision of the Act nor the rules promulgated pursuant to it are necessary to a decision in this matter. The requested sanctions are available to the Board without any reliance on the challenged statute or rules. Respondent elected not to challenge the evidence which established that he had entered into the Negotiated Settlement voluntarily and had subsequently violated one of the four conditions to which he had agreed. That being so, the sanctions requested by Petitioner are authorized by statute and rule.

IV. FINDINGS OF FACT

1. On September 30, 1996, notice was mailed via U.S. Certified Mail, Return Receipt Requested, to Norman C. Ralston, D.M.V., ("Respondent") notifying him that a hearing on the complaint filed against him by the Texas State Board of Veterinary Medical Examiners ("Board") would be held on November 7, 1996, at the State Office of Administrative Hearings in Austin, Texas.

2. Notice of the original complaint against Respondent was mailed to him on May 19, 1995, and notice of the First Amended Complaint was mailed to him on June 4, 1996; both mailings were via U.S. Certified Mail, Return Receipt Requested.

3. On January 20, 1994, Respondent and Ron Allen executed a "Negotiated Settlement" which resulted from one or more past complaints against Respondent; the Negotiated Settlement was accepted by the Board on February 2, 1994.

4. The Negotiated Settlement contains the following condition: "Dr. Ralston will obtain specific written consent to use alternate therapies from any client on whose animal they are used. The document shall be signed and retained in the client's file."

5. On March 26, 1994, Respondent treated Lisa Huckaby's cat with homeopathic remedies without obtaining specific written consent.


7. As part of the Negotiated Settlement accepted by the Board on February 2,
1994, Respondent was found to have violated Board Rule 573.63 by refusing to allow a Board Investigator to inspect and/or copy client/patient records. Such violation was within 36 months of the facts set out in Findings of Fact Nos. 5 and 6.

8. Respondent holds Veterinary License Number 980.

V. CONCLUSIONS OF LAW

1. Proper and timely notice of the hearing was served on Respondent, pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001 et seq. (Vernon Pamphlet 1996), 22 TEX. ADMIN. CODE 575 and 1 TEX. ADMIN. CODE 155 et seq.

2. The Board has jurisdiction over this matter pursuant to Section 14 of the Veterinary Licensing Act, TEX. REV. CIV. STAT. ANN. Art. 8890 (the “Act”).

3. The hearing in this matter was conducted according to the requirements of the Administrative Procedure Act (TEX. GOV’T. CODE ANN. § 2001 et seq.), the rules of the State Office of Administrative Hearings (1 TEX. ADMIN. CODE 155 et seq.) and the rules of the Board regarding practice and procedure (22 TEX. ADMIN. CODE 575).

4. Based on Findings of Fact Nos. 3-6, Respondent violated 22 TEX. ADMIN. CODE 573.62 by violating a settlement with the Board.

5. Based on Conclusion of Law No. 4 and Findings of Fact Nos. 3-8, Respondent’s actions constitute a Class B violation pursuant to 22 TEX. ADMIN. CODE 575.25(b).

6. Based on the Findings of Fact and Conclusions of Law, suspension of Respondent’s license to practice veterinary medicine for one year, with all but thirty days of the suspension period probated, and imposition of a $1,000 civil penalty is justified.

SIGNED this 28th day of January, 1997.

ELIZABETH R. TODD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
DR. RALSTON'S EXCEPTIONS TO THE PROPOSAL FOR DECISION
DOCKET NO. 578-95-0886
IN THE MATTER OF THE
COMPLAINT BY THE TEXAS
STATE BOARD OF VETERINARY
MEDICAL EXAMINERS AGAINST
NORMAN C. RALSTON, D V M
TSBVME COMPLAINT NO. 1995-11
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

RESPONDENT NORMAN C. RALSTON'S
EXCEPTIONS TO PROPOSAL FOR DECISION

COMES NOW, Norman C. Ralston, Respondent in the above styled and numbered Administrative Proceeding, and files these, his exceptions to the Proposal For Decision:

EXCEPTIONS TO FINDINGS OF FACT

1. Respondent excepts to Finding of Fact #5 of the Administrative Law Judge's Proposal For Decision in that it fails to properly characterize the evidence with regard to the consent issue. As worded the findings of fact leads to the conclusion that no consent was obtained at all. The letter of respondent regarding Lisa Huckaby upon which this finding is based makes it clear that the procedure was explained, the patient allowed the treatment to be administered but refused to sign the written consent form despite the fact that Dr. Ralston presented it for her signature. Respondent does not take issue with the fact that he did not obtain written consent as required by the board settlement. However, it is important to respondent that the findings of fact correctly state why. In this case it was not due to a failure to disclose or to in good faith attempt to comply, but the patient refused to sign. If in the future a third party or an administrative agency were to examine this Decision, it is important to have set out in the facts the reason why compliance did not occur. As presently worded, anyone in the future who sees these findings of fact will assume Dr. Ralston totally ignored his responsibility and/or failed to in anyway explain the procedures being used.

2. Respondent excepts to Finding of Fact #6 of the Administrative Law Judge's Proposal for Decision in that it fails to properly characterize the evidence with regard to the consent issue.
letter regarding Joy Cisco which is the only evidence upon which the conclusion of law is based clearly states that the patient was informed of the animal's condition, the alternatives for treatment and presented with a form which she refused to sign, but nevertheless allowed the treatment to be administered. Respondent does not take issue with the fact that he did not obtain written consent as required by the board settlement. However, it is important to respondent that the findings of fact correctly state why. In this case it was not due to a failure to disclose to the patient in good faith attempt to comply, but the patient refused to sign. If in the future a third party or an administrative agency were to examine this Decision, it is important to have set out in the facts the reason why compliance did not occur. As presently worded, anyone in the future who sees these findings of fact will assume Dr. Ralston totally ignored his responsibility and/or failed to in anyway explain the procedures being used.

Both of these exceptions are based on the Proposal for Decision itself which recites the exact language from exhibits #s 5 and 6: "The woman did decline signing our form that explains about alternative remedies." and "She did decline to sign our alternative treatment form..." There is no harm to the board in amending the findings of fact to reflect that the Respondent made the effort to both explain the treatment and have the form signed. On the other hand there is a benefit to Dr. Ralston in that amending the two findings of fact will more accurately explain what factually occurred were this Order to become an issue in the future.

Respectfully Submitted,

March 4, 1997

[Signature]

[Signature]

March 4, 1997

Irene M. Barr, Notary

Norman C. Ralston D.V.M.

Respondent

IRENE M BARR
NOTARY PUBLIC
STATE OF TEXAS
COMM EXP 07/05/97
MS. BEY-ROODE'S EXCEPTIONS TO THE PROPOSAL FOR DECISION
March 13, 1997

Ms. Elizabeth Todd  
Administrative Law Judge  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 502  
Austin, Texas 78701  

Re: Docket No. 578-95-0866; In the Matter of the Complaint by the Texas State Board of Veterinary Medical Examiners against Dr. Ralston, D.V.M.

Dear Judge Todd:

I write on behalf of Mr. Ron Allen, Executive Director of the Board, in response to Respondent Dr. Ralston’s Exceptions to Proposal for Decision filed on March 5, 1997.

The Board objects to Respondent’s exceptions for the reasons that Respondent failed to enter into evidence anything that would have indicated that Respondent did, in fact, explain to the two complainants what procedure would be involved in treating their animals, or that the complainants allowed the treatments to be given but merely declined to sign a consent form. In other words, it would be inappropriate for the Respondent to have included into your Proposal for Decision any evidence that was not entered by him during the hearing held on November 7, 1996.

Very truly yours,

Lynn Bey-Rooze  
Assistant Attorney General  
Administrative Law Division  
(512) 475-4300  
(512) 320-0167 FAX

cc: Norman Ralston, DVM  
Ron Allen

VIA FACSIMILE (214) 286-3101 & CM RRR # 329 211 888 INTER-AGENCY MAIL