AGREED ORDER

On this the 13 day of December, 2010, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Ricky Rogers, D.V.M. ("Respondent").

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to 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. The Board has jurisdiction over the subject matter and Respondent. Respondent has received all notice that may be required by law and by the Board’s rules. All jurisdictional requirements have been satisfied.


3. In October of 2005, the Board received several veterinary medicine bottles for compounded drugs that Respondent had dispensed to clients subsequent to the adoption of Board Order 2004-06

4. Among these bottles was a bottle labeled, “Baytril/Lincomycin 500 ml, for CAL TEX
Cattle, compounded by West Texas Pharmacy Services, RX# 472702, 07/29/05, Lot # 05072911, Exp. 07/06.” The label shows that this is bottle 20 of 40, and reads, “For the treatment and prevention of bovine respiratory disease and infectious arthritis. Inject 5 ml per 100 lbs Sub Q daily for 3-5 days. Withdrawal 28 days[.]” The expiration date exceeded the prescribed length of treatment.

5. Also among the bottles sent to the Board was a bottle labeled TYLO-OXY JECT 400-500ml, dispensing date of 10/17/05 for client CAL-TEX. The directions state, “Inject 6ml per 100lbs Sub-Q daily for the treatment of Bovine respiratory. Withdrawal time: 30 days[.]” However, this bottle’s label contained no expiration date, or dates indicating the length of the treatment protocol.

6. Another bottle of TYLO-OXY JECT 400-500 ml, was labeled with a dispensing date of 9/19/05 for client CAL-TEX. The directions state, “Inject 6ml per 100lbs Sub-Q daily for the treatment of Bovine respiratory. Withdrawal time: 30 days[.]” However, this bottle’s label contained no expiration date, or dates indicating the length of the treatment protocol.

7. On November 2, 2005, pursuant to the Board’s authority to monitor Respondent’s compliance with Board Order 2004-06, Board investigator Michael Miller visited Rogers Animal Hospital in Corsicana, Texas.

8. During that visit to Respondent’s clinic, Mr. Miller found five bottles of CHLOR-DEX-GENT (Chlorpheniramine 2mg/ml, Dexamethasone 0.4 mg/ml, Gentamicin 100 mg/ml) 500 ml. The label reads West Texas Pharmacy Services, RX# 420612, 07/29/05, Dr. R.C. Rogers, Lot# 05072910, Exp: 7/06, for 5R Cattle. The label indicates that 72 bottles were in this lot and contains directions that state, “For treating calves under 550 lbs with bovine respiratory disease and infectious arthritis. Inject Sub Q 5 ml per 100 lbs[.]” No information or warnings are indicated for the drug Gentamicin, which is not approved for use in cattle and which may result in harmful residues that may remain in an animal’s kidneys and other tissues for 18 months. Additionally, the expiration date on the label exceeded the prescribed length of treatment.

9. Mr. Miller also found one bottle of Baytril/Lincomycin 500 ml. The label reads “West Texas Pharmacy Services and has a sticker reading CAL TEX Cattle, RX# 472702, 10/11/05, Lot# 05100610, Exp: 10/06.” The label indicates that this is bottle 79 of 72 [sic,] and reads, “For the treatment and prevention of bovine respiratory disease and infectious arthritis. Inject 5 ml per 100 lbs Sub Q daily for 3-5 days. Withdrawal 28 days[.]” The expiration date on the label exceeded the prescribed length of treatment.

10. Mr. Miller also found two bottles of TYLO-OXY JECT 400-500 ml, labeled, “Inject 6 ml per 100 lbs SQ daily for the treatment of Bovine respiratory. Withdrawal time: 30 days.” The bottle’s label contained no expiration date, dates indicating the length of the treatment protocol, and did not identify the treated herd.
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 of Professional Conduct, Texas Administrative Code Sections 571-577.

2. Based on Findings of Facts 1 through 10, Respondent has violated Rule 573.62, VIOLATION OF BOARD ORDER/NEGOTIATED SETTLEMENTS, of the Board’s Rules of Professional Conduct, which requires a veterinarian to abide by the terms of an order entered against them.

3. Based on Finding of Facts 2 through 10, Respondent has violated Rule 573.44, COMPounding DRUGS, of the Board’s Rules of Professional Conduct, which requires licensed veterinarians to label all compounded drugs they dispense with (i) name and address of the attending veterinarian, (ii) date dispensed and expiration date, and the expiration date shall not exceed the length of prescribed treatment, (iii) medically active ingredients, (iv) identity of treated animals, (v) directions for use, (vi) cautionary statements if needed, (vii) withdrawal/withholding times if needed, (viii) condition or disease to be treated.

4. Based on Finding of Fact 1 through 10 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.

6. 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:

1. Gentamicin shall only be prescribed with an eighteen (18) month withdrawal period in food-producing animals and this shall be clearly labeled on the prescription bottles, as well as counseled to the client using Gentamicin.

2. Floroquinolones shall not be compounded with another prescription drug.

3. Respondent shall reflect in all client records all FDA-approved prescription drugs previously administered to the herd by Respondent or his client. When Respondent prescribes a compounded drug, he shall include in his client records an explanation of the protocol Respondent used to determine that there was no approved animal drug that, if used as labeled or used in an extra-label manner, might acceptably treat the condition.

4. A veterinarian is required to make a visit in person to the client when there is a change in loss/morbidity rate or a change in symptoms to maintain the veterinarian-client-patient relationship required prior to the veterinarian prescribing compounded drugs for a patient. Respondent shall make at least a yearly visit to maintain the veterinarian-client-patient relationship in cases where there is not a change in symptoms or a change in loss/morbidity rate to establish the diagnosis is still accurate and his treatment protocol is still resolving the diagnosed condition.

5. Respondent may ship prescription drugs so the drugs arrive at the client’s place of business on the same day Respondent arrives for his visit to diagnose the patient’s condition and establish or continue his veterinarian-client-patient relationship.

6. Respondent may have on-hand enough of a compounded drug to refill a client’s order one additional time. The refill shall be labeled in accordance with Board Rule 573.44 to match the original prescription, and the label shall be updated when the refill prescription is filled. Respondent may change labeling information on a bottle if a different client presents a need for the same compounded drug prior to use in the refill of the original client.

7. Respondent shall, in compliance with Board Rule 573.44, label the prescription bottle with the expiration date. The expiration date shall not exceed the length of the prescribed treatment. The length of the prescribed treatment shall be noted for the herd being treated and shall state that the expiration date starts with the onset of treatment of the animal and shall denote the course of treatment. If the specific condition the compounded drug is prescribed to treat is likely to manifest itself in members of the same herd over a specific period of time no longer than 90 days, Respondent shall note that period on the bottle label and adjust the expiration date to match it.
8. The Board further orders that Respondent shall remove the pricing from the informational materials he creates regarding compounded drugs, and Respondent shall only provide those informational materials to current clients. Respondent shall not make his informational materials available to the general public, and will not include the information on his website.

9. Nothing in this Order prevents Respondent from compounding drugs on his premises in compliance with state and federal laws and regulations, nor does this Order require Respondent to utilize the services of a compounding pharmacy.

10. None of the agreements above shall be construed to alter or amend the Board Rules or the provisions of the Veterinary Licensing Act.

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Ricky Rogers, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent’s license be SUSPENDED for two years, with said SUSPENSION STAYED and Respondent placed on PROBATION for all but 14 days, with the suspension period beginning the day after the effective date of the Order.

The Board further ORDERS that Respondent pay, within 30 days of the date of this Order, an ADMINISTRATIVE PENALTY of TEN THOUSAND DOLLARS ($10,000.00). If Respondent fails to pay the administrative penalty within 30 days of the date of this Order, any payment by the Respondent to the Board to renew his license will be applied toward the payment of any administrative fee owed to the Board, the failure to pay will be considered a violation of the board order, and further enforcement action may be taken.

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 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, RICKY ROGERS, 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.

Ricky Rogers, D.V.M. 11-1-10 Date

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, on this day, personally appeared RICKY ROGERS, 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 1ST day of NOVEMBER, 2010.

DEBORAH B. CULLISON
Notary Public
My Commission Expires October 15, 2013

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 13 day of DECEMBER, 2010.

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