DOCKET NO. 2002-52

IN THE MATTER OF § TEXAS STATE BOARD OF

THE LICENSE OF § VETERINARY MEDICAL EXAMINERS

JAMES RUTLEDGE, D.V.M.

AGREED ORDER

On this the 17th day of October, 2002 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of James Rutledge, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 375.27, an informal conference was held on July 25, 2002. The Respondent attended without 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. On July 3, 2001 Ms. Virginia Murphy, Houston, Texas, presented her cats "Bleu" and "Max" to James Rutledge, D.V.M., Mission Bend Animal Clinic, Houston, Texas, for boarding until July 9, 2001. "Bleu" was a grey female cat and "Max" is a larger black and white male cat. Both cats had been previous patients at the clinic. "Max" is diabetic and requires insulin injections twice a day after his meal.

2. Because the identification cards on the cats' cages were apparently accidentally switched by the kennel personnel, Dr. Rutledge administered two units of insulin to "Bleu" instead of "Max." Dr. Rutledge did not take any measures to assure himself that he was administering insulin to the proper patient. The clinic's senior veterinary assistant who was in charge of the kennel on the July 4 holiday administered two doses of insulin to "Bleu" (thinking it was "Max") during the day. The assistant observed the cat during the day and reported to Dr. Rutledge that the cat appeared normal. The next morning Dr. Rutledge, upon arriving at the clinic, found that "Bleu" was prostrate and semicomatose. He then discovered that the identification cards had been
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mistakenly switched. Dr. Rutledge began treatment of “Bleu” but the cat eventually went into cardiac arrest and could not be revived.

3. Dr. Rutledge’s failure to reasonably assure himself that he was administering insulin to the proper patient does not constitute the same degree of humane care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in Houston, Texas or similar community.

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 2 and 3, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, of the Board’s Rules of Professional Conduct, which requires veterinarians to exercise the same degree of humane care, skill and diligence in treating patients as is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community in which they practice, or in similar communities.

3. Based on Finding of Fact 2, Dr. Rutledge is responsible for the cat’s death under Rule 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, of the Board’s Rules of Professional Conduct, which states:
   (e) Responsibility for Acts of Non-Licensed Employees. A licensee may determine a non-licensed employee’s qualifications necessary to perform routine patient care and treatment. The licensee is directly responsible for all actions of non-licensed employees acting under the licensee’s directions or authorization. A licensee failing to properly supervise a non-licensed employee or improperly delegating care and/or treatment responsibilities may be subject to disciplinary action by the Board.

4. Based on Findings of Fact 2 and 3 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.
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4. 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 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 James Rutledge, D.V.M., be OFFICIALLY 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 his understanding of the Agreed Order, the notice, Findings of Fact and Conclusions of Law herein set forth, 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, JAMES RUTLEDGE, 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.

James Rutledge, D.V.M.

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, on this day, personally appeared James Rutledge, 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 August, 2002.

Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 17th day of October, 2002.

Martin Garcia, D.V.M., President