DOCKET NO. 2008-63

IN THE MATTER OF § TEXITAS BOARD OF
THE LICENSE OF § VETERINARY
DONALD SCARBROUGH, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 19th day of June, 2008, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Donald Scarborough, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on April 18, 2008. The Respondent was represented by counsel, Daniel R. Scarbrough. 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 their understanding of the alleged violations and the adequacy and sufficiency of the notice provided to them.

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 7, 2007, Teresa Messimer of Palestine, Texas, presented “Patience”, a six-year-old female Cocker Spaniel dog to Donald Scarborough, D.V.M., of Palestine, Texas, of Brookhollow Veterinary Clinic (TVC) as the dog was periodically vomiting and intermittent malaise. Upon further questioning on August 7, 2007, the presenting symptoms for “Patience” were redefined as gagging and retching. Dr. Scarborough gave a presumptive diagnosis of tonsillo-pharyngitis, and “Patience” was placed on 250 mg Tetracycline three times a day for eight days. On August 14, 2007, “Patience” was seen for a follow-up. Dr. Scarbrough found that “Patience’s” physical examination was within normal limits. Bloodwork revealed: BUN 9, GPT 19, and Glu 86. Dr. Scarbrough recommended the completion of the current prescription. On August 20, 2007, “Patience” was seen for continued symptoms of periodic malaise and vomiting. Dr. Scarbrough performed a post exercise EKG on “Patience” which disclosed a normal rhythm except for premature ventricular contraction occurring every sixty seconds. The EKG report was not
written in the patient’s records. On August 21, 2007, Dr. Scarbrough released “Patience” and scheduled a follow-up appointment in three to four weeks.

2. On August 23, 2007, Ed Messimer, the husband of Teresa Messimer, presented “Patience” to Dr. Candice F. Carden at Palestine Veterinary Hospital for a second opinion. Dr. Carden found “Patience” depressed, in respiratory distress, and had a rapid shallow breathing pattern. “Patience” also had harsh lung sounds, a tracheal rattle, and a tense abdomen. Dr. Carden stated a recent medical history disclosed “Patience” was coughing up a clear liquid and not eating well. Dr. Carden reviewed the patient records from Dr. Scarbrough. Due to the limited diagnostics performed by Dr. Scarbrough, Dr. Carden performed a complete blood count and general health profile. “Patience’s” bloodwork showed a high blood cell count and anemia. Dr. Carden also performed radiographs, which disclosed significant pulmonary edema in the left lung, and a severe bronchial pattern in the right lung. Dr. Carden gave the Messimers a poor prognosis for “Patience.” Dr. Carden gave “Patience” an injection of Furosemide (80 mg) and started her on Ciprofloxacin (250 mg). Dr. Carden prescribed Ciprofloxacin (250 mg orally twice a day) and Furosemide (50 mg orally every 24 hours for three days, then reduce to 25 mg daily) with instructions to return in the morning if “Patience’s” condition worsened. On August 24, 2007, the Messimers presented “Patience” again to the Palestine Veterinary Hospital, where Dr. Joe Hardt examined “Patience.” Dr. Hardt’s examination disclosed that “Patience” had dyspnea, bilateral rales over the thorax, and a temperature of 103 F. On August 25, 2007 “Patience” was sent home. “Patience” died on August 26, 2007.

3. Dr. Scarbrough’s failure to properly diagnose plural effusion in “Patience” does not represent 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 Palestine, Texas or similar communities. The failure to run complete diagnostic testing and properly diagnose plural effusion in “Patience” caused complications and led to the eventual premature death of “Patience.”

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 1 through 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.

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3. Based on Findings of Fact 1, Respondent has violated Rule 573.52 PATIENT RECORD KEEPING, which requires veterinarians to maintain individual patient records including any laboratory analysis, radiographs, or other details necessary to substantiate the examination, diagnosis, and treatment provided, and/or surgical procedure performed by the veterinarian.

4. Based on Finding of Fact 1 through 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.

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: (a)

(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.

.... (d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program.

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

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

In addition, the Board ORDERS that Donald Scarbrough, D.V.M. complete an additional SIX (6) hours of continuing education in internal medicine by the end of calendar year 2008.

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Documentation of the completion of the continuing education penalty shall be received by January 30, 2009. If Respondent fails to provide documentation of completion within 45 days of January 30, 2009, Respondent's license shall be suspended until the continuing education penalty is completed and documentation is received by the Board.

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 their understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that they 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 their right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that they 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.

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Donald Scarbrough, D.V.M.
I, DONALD SCARBROUGH, 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.

[Signature]
Donald Scarbrough, D.V.M.  
Date

STATE OF TEXAS
COUNTY OF Anderson

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

Given under the hand and seal of office this 5th day of May, 2008.

[Notary Seal]
Sharon J. Scarbrough  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19th day of June, 2008.

[Signature]
Bud E. Aldridge, D.V.M., President

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