DOCKET NO. 2007-46

IN THE MATTER § TEXAS STATE BOARD OF

OF THE LICENSE OF §

MICHAEL SCHMURR, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this, the 11th day of October, 2007 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of MICHAEL SCHMURR, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board’s staff met on July 3, 2007 to consider alleged violations of the Veterinary Licensing Act and the Board’s rules by Respondent.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a conference under Section 801.2056 and thereby dispose of the compliance issues set out below. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving the right to a conference, Respondent acknowledges his understanding of the alleged violations and the adequacy and sufficiency of the notice mailed to him.

Upon the recommendation of the staff 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 which may be required by law and by the Board’s rules. All jurisdictional requirements have been satisfied.

2. On June 11, 2007, the Board received an anonymous communication that Michael Schmurr, D.V.M., North Orange Veterinary Clinic, Orange, Texas, was abusing the drug ketamine.

3. On June 13, 2007, a Board investigator talked with Dr. Schmurr concerning his alleged diversion and use of ketamine. Dr. Schmurr stated that he and his wife were going through a divorce, and he admitted having an addiction to ketamine. However, he insisted that his last use of the drug was in February 2007. He said he inhales, rather than injects, the drug. He indicated that he voluntarily checked himself into an outpatient rehabilitation center, and has completed the treatment. He said he also attends Alcoholic Anonymous and has weekly urine testing. Ketamine is not kept at the clinic, according to Dr. Schmurr, but he obtains it from another veterinarian for use in sedating animals. (An audit of the clinic showed no ketamine present.) The investigator recommended that Dr. Schmurr enter into the Board’s peer assistance program,
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and Dr. Schmurr agreed. However, as of July 26, 2007 this has not occurred.

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 Finding of Fact 2 and 3, Dr. Schmurr has violated Rule 573.41, USE OF PRESCRIPTION DRUGS, of the Board’s Rules of Professional Conduct, which prohibits the obtaining of any drugs for non-animal use and that would promote addiction.

3. Based on Finding of Fact 2 and 3, Dr. Schmurr has violated Rule 573.60, PROHIBITION AGAINST TREATMENT OF HUMANS, of the Board’s Rules of Professional Conduct, which prohibits the dispensing of prescriptions medications for personal use by a human.

4. Based on Finding of Fact 2 and 3, Dr. Schmurr has violated Rule 573.4, ADHERENCE TO THE LAW, of the Board’s Rules of Professional Conduct, which states that no veterinarian shall commit any act that is in violation of the laws of the State of Texas or of the United States, if the act is connected with the veterinarian’s practice of medicine.

5. Based on Conclusions of Law 2 through 4, 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.

6. Based on Conclusions of Law 1 through 5, Respondent may be disciplined in accordance with the provisions of Section 801.401 of the Veterinary Licensing Act.

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

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED DOLLARS ($500.00). If Respondent fails to pay the civil penalty within 45 days of the date of this Order, Respondent’s license shall be suspended until the penalty is paid.

The Board further ORDERS that Respondent be formally REPRIMANDED.

The Board further ORDERS that Respondent’s license to practice veterinary medicine be
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SUSPENDED for a period of 60 months. Such suspension shall be STAYED and the suspension shall be PROBATED for the entire 60 months.

The Board further ORDERS that Respondent contact the director of the Board’s peer assistance program and participate fully in the program. Such participation shall include periodic drug testing. Respondent shall promptly report to the Board any anomalies revealed by the drug testing program.

The Board further ORDERS that Respondent shall, within 14 days of the date of this Order, surrender his DEA controlled substance license to the appropriate authorities.

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 provision of the 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 hearing and any right to seek judicial review of this Order. Respondent acknowledges that he is entitled to be represented by an attorney of Respondent’s choice at his expense in any proceeding before the Board.

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
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ORDER.

The date of this Agreed Order shall be the date it is adopted by the Texas Board of Veterinary Medical Examiners.

I, MICHAEL SCHMURR, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT 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.

Michael Schmurr, D.V.M.

STATE OF TEXAS
COUNTY OF Orange

BEFORE ME, on this day, personally appeared Michael Schmurr, D.V.M., known to me to be the person whose name is subscribed to the foregoing Agreed Order, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 29th day of August, 2007.

Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 11th day of October, 2007.

Robert L. Lastovica, D.V.M.
President of the Board