AGREED ORDER 2009-22

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
MICHAEL SCHMURR, D.V.M. § MEDICAL EXAMINERS

On this the 12th day of February, 2009, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board"), the matter of the license of Michael Schmurr, D.V.M. ("Respondent"). A Temporary Suspension Hearing ("Hearing") and Informal Conference were held on January 8, 2009. The Respondent received notice of the Hearing, but did not attend. The Board was represented at the Hearing and 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 an evidentiary hearing with the State Office of Administrative Hearings, and informally dispose of this matter without formal adjudication. Respondent agrees to comply with the terms and conditions set forth in this Order. By waiving formal adjudication of this matter, Respondent acknowledges his understanding of the allegations against him and the adequacy and sufficiency of the notice and due process provided him.

Upon the recommendation of the Enforcement Committee and with Respondent’s agreement and consent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order No. 2009-22 ("Order") as set forth below.

FINDINGS OF FACT

1. Respondent, Michael Schmurr, D.V.M. holds Texas Veterinary License No. 7458.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice and due process required by law and the rules of the Board. All jurisdictional requirements have been satisfied under TEX. OCC. CODE ANN. Title 4 (the "Act"). By executing this Order, Respondent waives any judicial review, defect in notice, hearing and/or due process and/or any further right to judicial review, notice, hearing and/or due process under the Act, TEX. GOV’T CODE ANN. §§ 2001.051-.054, and/or the Rules of the Texas Board of Veterinary Medical Examiners (22 TEX. ADMIN. CODE Chapter 575).

3. Agreed Order 2007-46, which found a violation of the Act and Rules of Professional Conduct related to Respondent’s admitted addiction to Ketamine, was executed by the Board on October 11, 2007. Under its terms, Respondent agreed to participate in the Texas Veterinary Peer Assistance Program ("PAP") for a duration of five-years. Compliance with the program required

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periodic drug testing. *Agreed Order 2007-46* included a probated suspension of Respondent’s license for sixty (60) months, and required Respondent to surrender his DEA controlled substances license.

4. Respondent was evaluated by Dr. Herbert Munden, Medical Director of PAP on December 10, 2007. Respondent was admitted into the Palmetto Recovery Center ("Palmetto") for addiction treatment on January 28, 2008, and discharged upon completion on May 13, 2008. Upon his discharge from Palmetto, Respondent entered PAP and executed a Contract reflecting his participation in the program.


8. Dr. Munden communicated to the Board via correspondence dated December 17, 2008, that Respondent voluntarily left Palmetto’s care and was, in Dr. Munden’s opinion, “not capable of practicing veterinary medicine at this time.” Dr. Munden communicated to Respondent via correspondence dated December 22, 2008, that Respondent was in violation of the terms of the PAP Contract and that the Contract, and Respondent’s participation in PAP, were terminated.

9. A Temporary License Suspension hearing was held on December 30, 2008, before the Board’s Executive Disciplinary Committee, pursuant to §801.409(a) of the Act. Respondent was not present at the hearing. Following testimony of both Dr. Munden and Dr. John Colaluca, (Respondent’s treating physician at Palmetto) and review of the investigation file, the Executive Disciplinary Committee temporarily suspended Dr. Schmurr’s Texas Veterinary License.

10. Pursuant to §801.409(c) of the Act, the Board held a second Temporary License Suspension hearing with notice given to Respondent on January 8, 2008. Respondent chose not to attend. Dr. Colaluca testified that Respondent’s addiction disease was in relapse and Respondent is unfit to practice veterinary medicine with skill and safety without further treatment for his addiction. Dr. Munden testified that Respondent is in violation of PAP and currently unfit to practice veterinary medicine with skill and safety.

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11. Respondent violated the terms of his Contract with the Texas Veterinary Peer Assistance Program and Agreed Order 2007-44.

12. Agreed Order 2008-44 was executed following a Board finding that Respondent failed to surrender his DEA controlled substances license pursuant to the terms of Agreed Order 2007-46. Respondent ultimately surrendered his DEA controlled substances license on January 10, 2008. On October 29, 2008 Respondent administered succinylcholine chloride to a feline patient on October 29, 2008 for purposes of euthanizing said patient. Succinylcholine chloride is not a controlled substance, but induces skeleto-muscular paralysis in a recipient, with no attendant anesthesia, sedation, or pain management qualities. The use of this drug and the manner of euthanization of said patient falls below the standard of humane treatment and care used by veterinarians in Orange, Texas, or similar communities.

13. Respondent is a continuing and imminent threat to the health of Respondent’s patients and/or the public welfare due to his lack of competence, impairment and/or failure to provide appropriate care for his patients.

14. Respondent agrees and consents to the Board’s complete revocation of his license to practice veterinary medicine in Texas, and waives any further hearing, notice, due process and/or formal adjudication at the State Office of Administrative Hearings.

15. Respondent agrees that his veterinary license shall remain suspended until such time as Agreed Order 2009-22 revoking Respondent’s veterinary license is executed by the Board.

CONCLUSIONS OF LAW

1. Based on Findings of Fact 1-11, Respondent has violated Rule of Professional Conduct §573.62 VIOLATION OF BOARD ORDER/NEGOTIATED SETTLEMENTS, which requires all persons who are subject to a Board Order shall abide by the terms of said order.

2. Based on Findings of Fact 1-13 and Conclusion of Law 1, Respondent has violated §801.402 (3) & (6) of the Veterinary Licensing Act, Texas Occupations Code, and is subject to disciplinary action by the Board; specifically, Respondent is (3) chronically or habitually intoxicated, chemically dependent, or addicted to drugs and (6) engages in practices or conduct that violates the Board’s Rules of Professional Conduct

3. Based on Findings of Fact 12 and 13, Respondent has violated Rule of Professional Conduct §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, by failing to use the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average member of the veterinary medical profession in good standing in Orange, Texas, or similar communities.
4. Based upon the evidence and testimony presented at the hearing, and the above Findings of Fact, the Board determines that Respondent's continuation of the practice of veterinary medicine constitutes a continuing or imminent threat to the public welfare.

5. Based on Conclusions of Law 1 through 4, Respondent is subject to disciplinary action under §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:

(2) revoke or suspend a license.

ORDER

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

1. Respondent's Texas Veterinary License No. 7458 is hereby ORDERED REVOKED.

2. Additionally, the Board ORDERS that Respondent's Texas Veterinary License No. 7458 be SUSPENDED from January 8, 2009, to the effective date of Agreed Order 2009-22.

Respondent shall cooperate with the Board's attorneys, investigators, compliance officers and other employees investigating his compliance with Agreed Order 2009-22. The failure to comply with any terms of Agreed Order 2009-22 may result in further disciplinary action. Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, Findings of Fact and Conclusions of Law set forth herein, and agrees to comply with the terms of Agreed Order 2009-22 or be subject to disciplinary action by the Board.

Respondent acknowledges that he had the right to appear at the Temporary Suspension Hearing on January 8, 2009 and/or be represented by legal counsel in this matter, and declined to do so. The effective date of Agreed Order 2009-22 is the date of its adoption by 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 HEREBIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.
I, MICHAEL SCHMURR, D.V.M., HAVE READ AND UNDERSTAND AGREED ORDER 2009-22. 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.

Michael Schmurr, D.V.M.  1-15-09  Date

STATE OF TEXAS §
COUNTY OF Hardin §

BEFORE ME, on this day, personally appeared Michael Schmurr, 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 15 day of January, 2009.

DIANIA M SANTANA
Notary Public
My Commission Expires 02-25-2012

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 12 day of FEB, 2009.

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

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