DOCKET NO. 2004-04

IN THE MATTER OF § TEXAS STATE BOARD OF
THE LICENSE OF § VETERINARY MEDICAL EXAMINERS

ROBERT J. SIMER, D.V.M.

AGREED ORDER

On this the 19th day of February, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Robert J. Simer, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on December 5, 2003. Respondent appeared 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 February 20, 2003, Stanley White, Perryton, Texas, presented a dog, "Sissy", to Robert J. Simer, D.V.M., Perryton, Texas, because the dog had been vomiting and had passed a jello-like substance in her excrement. Later in the day, Mr. White called Dr. Simer who told him that the dog had idiopathic hemorrhagic enteritis. Dr. Simer based his diagnosis on observations of the dog. He palpated the dog's abdominal area but did not do a blood analysis (CBC) or perform other diagnostics. Dr. Simer initially administered antibiotics but discontinued them by the next day. He also administered IV fluids to prevent dehydration.

2. Dr. Simer felt that the dog's condition improved on February 21st, although Dr. Simer noted in the patient records that the dog's stool was still "loose with mucus." Dr. Simer called Mr. White on that date and told him that he could pick up the dog that day or the morning of the next day (February 22nd). Dr. Simer last examined "Sissy" about 10 p.m. on February 21st. Around midnight on February 22nd, Mr. White went to the clinic to pick up the dog. Dr. Simer was not present. Someone assigned to clean the cages released the dog to Mr. White. He observed that the dog appeared to be weak and sick, and had dried vomit on her chest, legs and feet. Dr. Simer provided no discharge instruction or medications.
3. Within 30 minutes of arriving home, the dog began vomiting whenever she drank water. Diarrhea started a short time later. Mr. White began calling the telephone numbers listed for Dr. Simer, including his cell phone. All calls that day went unanswered. He began calling again on February 23rd, with the same results.

4. At around noon on February 23rd, Mr. White took "Sissy" to Randy Skaggs, D.V.M. Dr. Skaggs examined the dog and found that she had a temperature of 104 degrees F. He drew blood for analysis and determined from his examination that the dog was severely dehydrated and had severe bacterial gastroenteritis. He also found evidence that the dog had kidney and hepatic disease. Dr. Skaggs administered treatment, but "Sissy" died on February 26th.

5. Dr. Simer's patient records for "Sissy" are inaccurate and incomplete. The records incorrectly state that "Sissy" was presented to and treated by Dr. Simer on April 20-22, 2003. There is no documentation of Dr. Simer's examination of the dog on February 21st at 10 p.m. No discharge instructions were noted. Palpation during the examination was not noted. In June, 2001, a Board investigator had visited Dr. Simer and reminded him of the necessity of keeping patient records in accordance with the requirements of Rule 573.52 of the Board's Rules of Professional Conduct.

6. The following acts and/or failures to act by Dr. Simer do 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 community in Perryton, Texas or similar communities:

   a. the failure to conduct adequate diagnostic testing to determine the cause of the hemorrhagic enteritis and to determine other possible causes of the dog's condition (i.e. renal and hepatic disease);

   b. the premature discontinuation of antibiotic treatment when the cause of the enteritis was not established;

   c. the release of the dog after an observation period of only a day and a half;

   d. the lack of a discharge examination for approximately 12 hours (last examination 10:00 a.m. on the 21st; release time approximately 10 a.m. on the 22nd) prior to release;

   e. the release of a sick animal; and

   f. the release of an animal without any oral or written discharge instructions.
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 6, 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 5, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board’s Rules of Professional Conduct.

4. Based on Findings of Fact 1 through 6 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 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 Robert J. Simer, D.V.M., be OFFICIALLY REPRIMANDED.

The Board further ORDERS that Respondent pay a CIVIL PENALTY of FIVE HUNDRED DOLLARS ($500.00), payable within 45 days of the date of this Order. 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 civil penalty is paid.

The Board further ORDERS that Respondent take and pass the Board’s jurisprudence examination within 45 days of the date of this Order. If Respondent fails to take and pass the jurisprudence examination within 45 days of the date of this Order, Respondent’s license shall be suspended until Respondent does take and pass the examination. Respondent may not re-take the examination any more frequently than 10 working days from the date of his last sitting for the examination. Should Respondent engage in the practice of veterinary medicine when under suspension, he will be subject to immediate disciplinary action.

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 acknowledges that he waived representation 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, ROBERT J. SIMER, 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.

Robert J. Simer, D.V.M.

1/5/01

Date

STATE OF TEXAS
COUNTY OF \[\text{EXPIRED}^{1}\]

BEFORE ME, on this day, personally appeared ROBERT J. SIMER, 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 5 day of \[\text{FEB}^{2}\], 2004

TERESA J. SCHWIER
NOTARY PUBLIC
STATE OF TEXAS

Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 19th day of February, 2004.

Dee A. Pederson, D.V.M., President