DOCKETED COMPLAINT NO. 1988-14
TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS
vs.
MALCOLM C. SMITH, JR., D.V.M.
TEXAS VETERINARY MEDICAL LICENSING BOARD
LICENSE NO. 1870
1987 RENEWAL CERTIFICATE NUMBER 0218

COMPLAINT AFFIDAVIT FORM

BEFORE ME, the undersigned authority, a Notary Public and for Texas, on this day personally appeared THOMAS CHESIRE, who after being duly sworn, did depose and say:

"I, THOMAS CHESIRE, being an employee of the Texas Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one DR. MALCOLM C. SMITH, JR., D.V.M., 3410 Miramar Drive, LaPorte, Harris County, Texas, Texas Veterinary License Number 1870, 1987 Renewal Certificate Number 0218, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas Board of Veterinary Medical Examiners, I, THOMAS CHESIRE do hereby present the following complaint against MALCOLM C. SMITH, JR., D.V.M., who is hereinafter called Respondent.

I.
The Respondent has failed to maintain, at his place of business, adequate records on DEXTROMETHAMINE, aka Dextromethamphetamine Sulfate, a Schedule II Controlled Substance, ordered on the following DEA Form 222:

<table>
<thead>
<tr>
<th>QUANTITY</th>
<th>STRENGTH</th>
<th>DATE ORDERED</th>
<th>DATE SHIPPED</th>
<th>ORDER NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 x 500 mg.</td>
<td>5 mg.</td>
<td>Aug. 29, 1987</td>
<td>Sept. 8, 1987</td>
<td>10511974</td>
</tr>
<tr>
<td>2,000 tablets</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

II.
On or about July 7, 1987, Tom Cheshire, Investigator, State Board of Veterinary Medical Examiners, inspected the patient records corresponding to the Dextromethamphetamine, aka Dextromethamphetamine Sulfate, and found the Respondent has failed to maintain patient records reflecting the use of this drug.
III.

The Respondent utilized the Dextroamphetamine listed in Paragraph I of this complaint in the course of research he was conducting concerning appetite control medication for dogs. Utilization of the Dextroamphetamine as described is not necessary or needed for the care of the animals.

IV.

By failing to maintain adequate records at his place of business for the Schedule II Controlled Substance listed in Paragraph I of this Complaint, the Respondent has violated Article 7465a, V.A.C.S., Section 7(b), Veterinary Practice Act which states:

Article 7465a, Section 7(b), Veterinary Practice Act -
The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

V.

By failing to maintain adequate records at his place of business for the Schedule II Controlled Substances listed in Paragraph I of this Complaint, the Respondent has violated Rule 30 of the Rules of Professional Conduct which states:

Rule 30 -
Texas veterinarians shall maintain at their place of business records of all drugs listed in Schedule II of 21 Code of Federal Regulation, Part 1300 to end, in their possession. These records shall be maintained for a minimum of five (5) years. The Board shall prescribe a form for keeping records of those Schedule II substances which shall contain the following information:
A. Date of Acquision
B. Quantity Purchased
C. Date Administered, Dispensed, or Prescribed
D. Quantity Administered, Dispensed, or Prescribed
E. Name of Client and Patient receiving the Drug(s)
F. Diagnosis
G. Balance on Hand
VI.
Through failure to maintain adequate patient records to substantiate use of the Controlled Substances listed in Paragraph I of this Complaint, the Respondent has violated Rule 32 of the Rules of Professional which states:

Rule 32 -
Individual records will include, but are not limited to, identification of patient, patient history, including immunization records, dates of visits, x-rays, names and dosages of medications administered and/or dispensed, and other details as necessary to substantiate diagnosis and treatment.

Patient records shall be maintained for a period of three years and are the responsibility and property of the employing veterinarian.

VII.
By administering the Dextroamphetamine listed in Paragraph I of the complaint when not necessary or required for the care of animals, the Respondent has violated Rule 33 of the Rules of Professional Conduct which states:

Rule 33 -
It shall be unprofessional and a violation of the Rules of Professional Conduct for the veterinary profession for a veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give or deliver to or for any person, narcotic drugs, dangerous drugs, or any controlled substances that are not necessary or required for the care of animals, or where the use or possession of such drugs would promote addiction thereto. For purposes of the rule the term Narcotic Drugs, Dangerous Drugs, and Controlled Substances, shall mean those which are defined and recognized as such by any law of the State of Texas or of the United States.

VIII.
The Texas State Board of Veterinary Medical Examiners has grounds to take disciplinary action against Dr. Smith's veterinary License under the Texas Veterinary Licensing Act, Article 7465a, V.A.T.C.S., Section 14(c) and (e) which state:

Article 7465a, Section 14(c) and (e), Veterinary Licensing Act - "... the Board may revoke or suspend a license, place a person whose license has been suspended on probation or reprimand a licensee, ... if it finds that an applicant or licensee: (c) has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or
(e) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with the law."

The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 23rd day of December, 1987.

Further, Affiant sayeth not.

THOMAS CHESIRE, Affiant

SUBSCRIBED and SWORN TO before me by the said THOMAS CHESIRE, this the 23rd day of December, 1987.

JUDY C. SMITH
Notary Public in and for Texas

The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. MALCOLM C. SMITH, JR., D.V.M., under Docket Number 1988-14, this the 31st day of December, 1987.

FRED K. SOIFER, D.V.M., Secretary
Texas State Board of Veterinary Medical Examiners
FINDINGS AND ORDERS OF THE BOARD

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

VERSUS

MALCOLM C. SMITH, JR., D.V.M.

TEXAS VETERINARY MEDICAL LICENSE NUMBER 1870

1987 RENEWAL CERTIFICATE NUMBER 0218

BOARD ORDER ACCEPTING LICENSE FOR SURRENDER AND CANCELLATION

On the 4th day of January, 1988, DR. MALCOLM C. SMITH, JR. voluntarily surrendered Texas Veterinary License Number 1870 for cancellation in lieu of hearing on Docketed Complaint 1988-14, as set forth in the attached affidavit.

On the 5th day of February, 1988, the attached affidavit was presented to the Board for acceptance. Accordingly, the Board accepted Texas Veterinary License Number 1870, previously issued to DR. MALCOLM C. SMITH, JR., for surrender, and ordered License Number 1870 cancelled.

EXECUTED this the 5th day of February, 1988.

W.L. "Dub" Anderson, D.V.M., President

February 5, 1988

Jim F. Humphrey, Vice-President

February 5, 1988

Fred K. Soifer, D.V.M., Secretary

February 5, 1988

Larry M. Dubuisson, D.V.M., Member

February 5, 1988

Olivia R. Ruday, Member

February 5, 1988

Mike Lewis, Member

February 5, 1988

Robert D. Lewis, D.V.M., Member

February 5, 1988

Mary E. Mainster, D.V.M., Member

February 5, 1988

Edward S. Murray, D.V.M., Member

February 5, 1988
THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned notary public, on this day personally appeared MALCOLM C. SMITH, JR., D.V.M., 3410 Miramar Drive, LaPorte, Harris County, Texas, who after being by me first duly sworn, upon his oath, deposed and said;

I, MALCOLM C. SMITH, JR., D.V.M., of 3410 Miramar Drive, LaPorte, Harris County, Texas and holder of Texas Veterinary License Number 1670, after conferring with Donald B. Wilson, Executive Director, Texas Board of Veterinary Medical Examiners, voluntarily state as follows:

I hereby request that the Texas State Board of Veterinary Medical Examiners accept this voluntary surrender of my veterinary license in lieu of a disciplinary action, resulting from Docketed Complaint Number 1988-14 and take appropriate action to cancel same, effective immediately. I understand that reinstatement of my license will only be considered, upon my petition to the Texas Board of Veterinary Medical Examiners, at the sole discretion of the Board, and will include any conditions the Board deems necessary.

MALCOLM C. SMITH, JR., D.V.M.

SUBSCRIBED AND SWORN to by the said MALCOLM C. SMITH, JR., D.V.M., before me, on this the 25th day of January, 1988, to certify which, witness my hand and seal of office.

JUDY C. SMITH, Notary Public in and for the State of Texas