DOCKET NO. 2001-20

IN THE MATTER OF § TExAS STaTE BOARD OF

THE LICENSE OF §

RaCHaEL H. SMITH, D.V.M. § VETErINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 18th day of October, 2001 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Rachael H. Smith, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on July 26, 2001. The Respondent attended 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her.

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 April 7, 1999 Ms. Theresa Leone of San Antonio, Texas presented her cat “Stripe” to Rachael H. Smith, D.V.M., Animal Hospital of San Antonio, Texas for treatment of ear mites. Dr. Smith medicated the cat’s ears with Frontline, a product labeled for use on ticks and fleas. Dr. Smith also used Frontline to medicate the ears of another cat ("Morgana") belonging to Ms. Leone. No written waiver, consent or warning for the use of Frontline was given to Ms. Leone by Dr. Smith.

2. Upon leaving the clinic, Ms. Leone noticed that “Stripe’s” eyes were dilated, he was salivating, he could not stand up, and he appeared to be in a comatose state. She immediately returned to the clinic. Dr. Smith examined the cat and stated that “Stripe” may have had an allergic reaction to Frontline. She then administered Dexamethasone and Diphenhydramine HCL to the cat. Ms. Leone took the cat home later in the day.

3. During the ensuing weekend, “Stripe” did not eat any food. During the next two weeks Ms.
Leone returned the cat to the clinic where the cat was force fed for three days and hydrated. Dr. Smith told Ms. Leone that the cat must have had an ear infection and an allergic reaction to the Frontline. For the next six to eight months, “Stripe” had problems eating and Ms. Leone also noticed that the cat was having problems with his hearing. Ms. Leone called Frontline technical support and learned that some veterinarians use Frontline off-label for ear mites, but that the practice is considered experimental.

4. On August 9, 2000 Ms. Leone took “Stripe” to Heather Wright, D.V.M., who found that “Stripe’s” ear drums appeared to be ruptured.

5. The administering of a medication to a cat for a use not authorized by the medication’s label without a written and signed consent, waiver or warning as alleged in Finding of Fact 1 does not constitute the exercise of 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 San Antonio, Texas or similar communities.

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 5, 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 1 through 5 and Conclusions of Law 1 through 2, 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.

4. Based on Conclusions of Law 1 through 3, 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
Docket No. 2001-20
Rachael H. Smith, D.V.M.
Page 3

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 Finding of Fact and Conclusions of Law, the Board ORDERS that Rachael H. Smith, D.V.M., be REPRIMANDED.

The Board further ADOPTS the following terms and conditions:

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 her understanding of the Agreed Order, the notice, Findings of Fact and Conclusions of Law herein set forth, and agrees that she 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she has 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
Docket No. 2001-20
Rachael H. Smith, D.V.M.

Page 4

ORDER.

The effective date of this Agreed Order shall be the date it is adopted by the Board.

I, RACHAEL H. SMITH, 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.

Rachael H. Smith, D.V.M.

STATE OF TEXAS
COUNTY OF BEXAR

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

Given under the hand and seal of office this 22 day of August, 2001.

Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 18 day of October, 2001.

J. Lynn Lawhon, D.V.M., President