DOCKET NO. 2004-14

IN THE MATTER OF

$ TEXAS STATE BOARD OF

THE LICENSE OF

$ VETERINARY MEDICAL EXAMINERS

PAUL SMITH, D.V.M.

AGREED ORDER

On this the 17th day of June, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Paul Smith, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on April 28, 2004. 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 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 May 24, 2003, Ms. Elizabeth Schardt, Houston, Texas, presented her nine-year old yellow lab "Jasmine" to the Spring Woods Veterinary Clinic, Houston, Texas. She explained to Julia Wagner, D.V.M., that the dog had lost 10 pounds of weight in a short period of time and was not eating properly. The dog had also experienced vomiting and bloody stools. Dr. Wagner performed blood work and a fecal examination and diagnosed whip worms. Dr. Wagner prescribed treatment for the whip worms, vomiting, and possible infection. The dog was also treated for dehydration.

2. Paul Smith, D.V.M., owner of the clinic, reviewed the blood work and Dr. Wagner’s prescribed treatment. The laboratory results showed elevated blood glucose (374). Ms. Schardt called the clinic on May 27th, and was told by Dr. Smith that the dog’s liver and pancreas looked fine. No mention was made of the glucose level or the possibility of diabetes.

3. "Jasmine" appeared to improve during the period May 24th through May 30th, but on May 31st she vomited again and was weak and unable to stand up. Ms. Schardt returned the dog to the clinic on May 31st, and mentioned to Dr. Smith that the dog had once been diagnosed with hip
dysplasia. Dr. Smith found that the dog had fleas and a large “hot spot” on the right rear leg. Dr. Smith said that the dog’s overall health was good. Dr. Smith did not re-check the dog’s glucose level which was elevated seven days earlier.

4. Two hours after the visit to Dr. Smith’s clinic, “Jasmine” vomited again and seemed to get weaker. On June 1, 2003, Ms. Schardt took the dog to the Veterinary Emergency Referral Group, Inc., Houston, Texas where the dog was examined by Laurie Noaker, D.V.M. A complete blood count indicated that the dog’s white blood count was increased at 22,000. Her biochemistry profile showed other abnormalities, including a glucose level of 581.5. The urine tested positive for glucose and ketones. Dr. Noaker’s diagnosis was diabetes ketoacidosis and pancreatitis. The dog was hospitalized and treatment options were discussed. Therapy was begun, and the glucose slowly declined, but the dog appeared more depressed and weaker. Dr. Noaker asked Heather Conquest, D.V.M., to review the record and give Ms. Schardt a second opinion. After speaking with Dr. Conquest, Ms. Schardt elected to euthanize “Jasmine.”

5. Based on Findings of Fact 1 through 4, Dr. Smith’s failure to presumptively diagnose diabetes in a nine-year-old patient based on elevated glucose levels, discuss with the client the possibility of diabetes based on the blood profile, perform a urinalysis to confirm the diagnosis, and re-check the patient’s glucose level when the patient was presented on May 31, 2003, 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 Houston, 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 Findings of Fact 1 through 5 and Conclusions of Law 1 and 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.
5. 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 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 Paul Smith, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay, within forty-five (45) days of the date of this Order, a CIVIL PENALTY of Five Hundred Dollars ($500.00). If Respondent fails to pay the civil penalty within 45 days, Respondent’s license shall be SUSPENDED until the civil penalty is paid.

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 is not 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 ORDER.

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

I, **PAUL 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.

Paul Smith, D.V.M.

Date 5-19-04

STATE OF TEXAS
COUNTY OF Harris

BEFORE ME, on this day, personally appeared PAUL SMITH, 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 19th day of May, 2004.

Elaine J. Darras
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 17th day of June, 2004.

Dee Pederson, D.V.M., President