DOCKET NO. 2017-084

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

AGREED ORDER

On this the 8th day of December, 2016, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Roy Smith, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board’s staff met on October 24, 2016, to consider alleged violations of the Veterinary Licensing Act and the Board’s rules by Respondent.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a conference under Section 801.2056 and thereby dispose of the compliance issues set out below. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving the right to a conference, Respondent acknowledges understanding of the alleged violations and the adequacy and sufficiency of notice.

Upon the recommendation of the Staff 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. Respondent, Roy Smith, D.V.M., of Round Rock, Texas, holds Texas veterinary license 2081.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent received notice, which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under Tex. Occ. Code Ann. Title 4 (Act). By entering into this Agreed Order, Respondent waives any defect in the notice and any further right to notice and hearing under the Act; Tex. Gov’t Code Ann. §§ 2001.051-.054; and the Rules of the Texas Board of Veterinary Medical Examiners (Board Rules) (22 Tex. Admin. Code, Chapter 575).

3. On July 19, 2016, Craig Olsen presented his kitten, Abby, to Central Texas Cat Hospital (hereinafter “the Clinic”) with concerns about Abby’s diarrhea. Abby was examined by Annetra Cassens, D.V.M., who performed a fecal test and recommended canned food with probiotics as the initial treatment. Dr. Cassens also recommended a recheck. Mr. Olsen was later informed by telephone that the fecal test results were normal. Mr. Olsen returned to the Clinic on July 22, 2016. Dr. Cassens noted that Abby continued to lose weight, although Mr. Olsen reported that the diarrhea had resolved. Dr. Cassens recommended that Mr. Olsen return the following Monday to check Abby’s progress and discuss possible further diagnostics with another veterinarian.
4. On July 25, 2016, Mr. Olsen and his son presented Abby to Respondent at the Clinic. Respondent performed a physical exam and noted that Abby had failed to gain any weight since the last exam. Respondent told Mr. Olsen that he wanted to take Abby to the Clinic’s lab for a fresh stool sample to run another fecal test. Mr. Olsen questioned the purpose of running another fecal test since the previous test had been normal. Respondent then dismissed Mr. Olsen from the Clinic using profane language.

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 the above Findings of Fact, Respondent has violated Rule 573.20, RESPONSIBILITY FOR ACCEPTANCE OF MEDICAL CARE, of the Board’s Rules of Professional Conduct, which states that once a veterinarian-client-patient relationship has been established, a veterinarian may discontinue treatment: at the request of the client; after the veterinarian substantially completes the treatment or diagnostics prescribed; upon referral to another veterinarian; or after notice to the client providing a reasonable period for the client to secure the services of another veterinarian. Respondent violated this Rule by dismissing Mr. Olsen without fulfilling one of these requirements.

3. Based on the above Conclusions of Law, 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 the above Conclusions of Law, 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 an administrative penalty.

.... (d) In addition to other disciplinary actions authorized by this subchapter, the
board may require a license holder who violates this chapter to participate in a continuing education program.

5. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

6. Based on the above Findings of Fact and Conclusions of Law, and given the nature and severity of the violations, Respondent's violations are Class B violations under Rule 575.25, RECOMMENDED SCHEDULE OF SANCTIONS, and Respondent is subject to discipline under that Rule.

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

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent, be INFORMALLY REPRIMANDED.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of FIVE HUNDRED DOLLARS ($500.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

The Board further ORDERS that Respondent shall take and pass the Texas jurisprudence examination within 90 days from the date of this Agreed Order.

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 understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees to 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 the right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that Respondent had 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 ORDER.

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

Signature page follows.
I, ROY 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.

Roy Smith, D.V.M.  
11/16/16

Received
NOV 18 2016
Texas State Board of
Veterinary Medical Examiners

STATE OF TEXAS  
COUNTY OF WILLIAMSON

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

Given under the hand and seal of office this 11th day of November, 2016

DAWN M. SHEPHERD  
My Notary ID # 11820844  
Expires December 15, 2019
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 8th day of December, 2016

Roland Lenarduzzi, D.V.M.  
Board President

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