DOCKET NO. 2003-38

IN THE MATTER § TEXAS STATE BOARD OF
OF THE LICENSE OF §
GARY SMRSTICK, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 16th day of October, 2003 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Gary Smrstick, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, Respondent appeared without counsel at an informal conference on August 5, 2003 in response to a letter of invitation from the Board. The Board was represented at the informal conference by the Board's Enforcement Committee.

Respondent, without admitting to 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 compliance issues. Respondent agrees to comply with the terms and conditions set forth in this Agreed Order. In waiving an adjudicative hearing, Respondent acknowledges his understanding of the alleged violations and the adequacy and sufficiency of the notice mailed 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. In a previous case (Docket No. 2003-08), Gary Smrstick, D.V.M., Austin, Texas, was assessed a thirty-day license suspension which began on February 13, 2003, the date of approval of Agreed Order No. 2003-08. Dr. Smrstick was given a copy of the Order prior to February 13, 2003, and thus knew or should have known of the provisions of the Order and knew or should have known that the suspension would take place on the date of Board action.

2. On February 20, 2003, an investigator placed a telephone call to the Humane Society of Williamson County and asked to speak to Dr. Smrstick. The receptionist informed the investigator that Dr. Smrstick was performing surgery at the time.

3. On February 21, 2003, the investigator visited the premises of the Humane Society of Williamson County. The investigator obtained records from the Humane Society which showed that Dr. Smrstick had performed surgery, and thus practiced veterinary medicine, on February 20, 2003.
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 3 and Conclusion of Law 1, Respondent has violated Rule 573.62, VIOLATION OF BOARD ORDER/NEGOTIATED SETTLEMENTS, of the Board’s Rules of Professional Conduct.

3. Based on 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.

6. Based on Conclusions of Law 1 through 3, Respondent may be disciplined by the Board in the manner provided for in Sec. 801.401 of the Veterinary Licensing Act, Texas Occupations Code.

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

The Board ORDERS that the Respondent be officially REPRIMANDED.

The Board further ORDERS that the Respondent’s license to practice be SUSPENDED for a period of one year. Following 30 days from the date of this order, the Suspension is STAYED for the eleven remaining months of Suspension, and the Respondent is placed on PROBATION during those eleven months.

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
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other provisions of the Act or the Board Rules, may result in further disciplinary action.

RESPONDENT ACKNOWLEDGES THAT IF DURING THE PERIOD OF SUSPENSION AND PROBATION, RESPONDENT ENGAGES IN ACTS OR OMISSIONS THAT ARE DETERMINED TO BE A VIOLATION OF THIS ORDER, THE VETERINARY LICENSING ACT, OR THE BOARD'S RULES, THE SUSPENSION OR PROBATION WILL BE AUTOMATICALLY REVOKED AND THE RESPONDENT'S LICENSE WILL BE SUMMARILY SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS.

Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, Findings of Fact and Conclusions of Law herein set forth, 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 entitled to be represented by an attorney of Respondent's choice at his expense. Respondent has voluntarily represented himself.

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 date of this Agreed Order shall be the date it is adopted by the Texas Board of Veterinary Medical Examiners.

I, GARY SMRSTICK, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT 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.
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Gary Smrstick, D.V.M.
Respondent

STATE OF TEXAS
COUNTY OF Travis

BEFORE ME, on this day, personally appeared Gary Smrstick, D.V.M., known to me to be the person whose name is subscribed to the foregoing Agreed Order, and acknowledged to me that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 2nd day of September, 2003

MICHAEL J. MILLER
Notary Public, State of Texas
My Commission Expires
July 31, 2005

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the ______ day of ________, 2003.

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