DOCKET NO. 2001-19

IN THE MATTER OF

THE LICENSE OF

GIANFRANCO SPELLMAN

§

TENAS STATE BOARD OF

§

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 Gianfranco Spellman, 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 with 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 August 23, 2000 Cynthia Diane Gamez of Austin, Texas presented her cat "Clyde" to Gianfranco Spellman, D.V.M., North Austin Veterinary Clinic, 10806 North Lamar, Austin, Texas because "Clyde" had barely eaten in the prior three to four days and had been throwing up hairballs and food for the last two to three weeks.

2. Based on his examination of "Clyde" and the cat's past history of passing urine crystals, Dr. Spellman concluded that the cat probably had a kidney infection. Dr. Spellman told Ms. Gamez that he could either give "Clyde" an antibiotics regimen to combat the kidney infection or have blood tests performed to determine an exact diagnosis. Ms. Gamez elected the antibiotics treatment and decided to return a stool sample from "Clyde" to the clinic before authorizing blood work. Dr Spellman gave the cat antibiotic injections and prescribed additional antibiotics for administration at home. Although Dr. Spellman acknowledged the probable infection, he also vaccinated the cat.
Docket No. 2001-19
Gianfranco Spellman, D.V.M.
Page 2

3. Dr. Spellman's patient records for "Clyde" contain notations for antibiotics but do not indicate dosages, concentrations and routes of administration for each drug or treatment administered and do not contain a diagnosis to substantiate the treatment given.

4. Dr. Spellman's act of vaccinating an ill cat as alleged in Finding of Fact 2 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 Austin, 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 2 and 4, 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 3, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board’s Rules of Professional Conduct, which states as follows:
   (a) Individual records will be maintained at the veterinarian’s place of business and include, but are not limited to:
      (10) names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed;
      (11) other details necessary to substantiate the examination, diagnosis, and treatment provided, and/or surgical procedure performed.

4. Based on Finding of Fact 2 through 4 and Conclusions of Law 1 through 3, 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.
Docket No. 2001-19
Gianfranco Spellman, D.V.M.
Page 3

5. Based on Conclusions of Law 1 through 4, 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 Finding of Fact and Conclusions of Law, the Board ORDERS that Gianfranco Spellman, D.V.M., be REPRIMANDED.

The Board further ORDERS that Respondent pay a CIVIL PENALTY of $500, payable within 45 days of this ORDER.

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 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 represented by legal counsel in this matter.
Docket No. 2001-19
Gianfranco Spellman, D.V.M.

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, GIANFRANCO SPELLMAN, 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.

Gianfranco Spellman, D.V.M.  
8-21-2001  

STATE OF TEXAS  
COUNTY OF TRAVIS

BEFORE ME, on this day, personally appeared Gianfranco Spellman, 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 21 day of AUGUST, 2001.

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