DOCKET NO. 2013-67

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

ROBERT SPITZ, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 25th day of March, 2013 came to be considered by the Texas Board of Veterinary Medical Examiners (Board) the matter of the license of Robert Spitz, D.V.M. (Respondent). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board's staff met on January 22, 2013 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 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 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, Robert Spitz, D.V.M. of Austin, Texas, holds Texas veterinary License 5612.

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 October 20, 2011, board investigators conducted an onsite inspection at Respondent’s clinic, Lake Austin Boulevard Animal Hospital (Clinic) in Austin, Texas. The investigators
examined Respondent’s controlled substance log and found that the log did not contain an accurate and up-to-date balance on hand for each controlled substance.

4. At the time of the inspection, the Clinic’s drug inventory included three fentanyl transdermal system 25 mcg/h patches, but the controlled substance log indicated that there were five patches on hand in an entry dated March 28, 2011.

5. At the time of the inspection, the Clinic’s drug inventory included one fentanyl transdermal system 50 mcg/h patch, but the controlled substance log indicated that there were two patches on hand in an entry dated February 8, 2011.

6. At the time of the inspection, the Clinic’s drug inventory included two fentanyl transdermal system 75 mcg/h patch, but the controlled substance log indicated that there were no patches on hand in an entry dated March 28, 2011.

7. At the time of the inspection, the Clinic’s drug inventory included 17 ml of morphine 10 mg/ml injectable, but the controlled substance log indicated that there were 3.55 ml on hand in an entry dated April 29, 2011.

8. At the time of the inspection, the Clinic’s drug inventory included 230 ml of diazepam 5 mg/ml injectable, but the controlled substance log indicated that there was none on hand in an entry dated March 10, 2011.

9. At the time of the inspection, the Clinic drug inventory included approximately 100 ml of Beuthanasia D Special, but the controlled substance log indicated that there were 81 ml on hand in an entry dated May 14, 2011.

10. At the time of the inspection, the Clinic’s drug inventory included 100 diazepam 5 mg tablets, but the controlled substance log indicated that there were 58 tablets on hand in an entry dated May 11, 2011.

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 Findings of Fact 1 through 10, Respondent has violated Rule 573.50, CONTROLLED SUBSTANCES RECORDS KEEPING FOR DRUGS ON HAND, of the Board’s Rules of Professional Conduct, which requires veterinarians to maintain at their place of business records of all scheduled drugs listed in the Texas Controlled Substances Act in their possession, including the balance on hand.

3. Based on Findings of Fact 1 through 10 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 is subject to denial of a license or to disciplinary action under Section 801.402, the Board may: (a)

(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 Conclusions of Law 1 through 4, 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.

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 receive a FORMAL REPRIMAND.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of ONE THOUSAND DOLLARS ($1000.00). If Respondent
fails to pay the administrative penalty within 45 days of the date of this Order, Respondent’s license may be suspended until the penalty is paid, and any payment by the Respondent to the Board to renew his license will be applied toward the payment of any administrative fee owed to the Board, and further enforcement action may be taken.

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 Agreed 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 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 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. 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, ROBERT SPITZ, 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.

[Signature]

ROBERT SPITZ, D.V.M.

DATE

[Date]

Agreed Order 2013-67
Robert Spitz, D.V.M.
STATE OF TEXAS §
COUNTY OF Williamson §

BEFORE ME, on this day, personally appeared Robert Spitz, 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 14th day of February, 2013.

[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 25th of March, 2013.

[Signature]
Bud E. Alldredge, Jr., D.V.M., President