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Texas State Board
of Veterinary Medical Examiners

DOCKET NO. 2015-032

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

AGREED ORDER

On this the 27 day of January 2015, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of JOHN STERN, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on November 17, 2014. Respondent did attend the informal conference and was represented by counsel, John Kovak. 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. Respondent, JOHN STERN, D.V.M. of Needville, Texas, holds Texas veterinary license 3482.
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. Larry McDaniel presented his two year old neutered male canine named Bolt to Jana L. Zapalac, D.V.M. on October 21, 2013 at the Needville Animal Hospital (the "Hospital") for

examination of a growth on the right hind foot. Dr. Zapalac recommended the removal of the growth, which was performed the following morning by Respondent, who owns the Hospital.

4. Dr. Zapalac stated that Respondent made "relatively wide surgical margins" that appeared appropriate to her. She further wrote that she had "some concern with the amount of tension Respondent applied to bring the skin edges into apposition and whether the incision line would remain closed." She further stated that, as a surgeon, it is Respondent's discretion to determine the appropriate method for closing the wound.

5. Mr. McDaniel picked Bolt up from the Hospital on October 22, 2013, at approximately 5:30 p.m. and was instructed by Dr. Zapalac to keep Bolt's bandage on and to bring him in for a follow-up appointment the following week. Bolt was discharged with an Elizabethan collar and was prescribed medications by Dr. Zapalac.

6. Despite Ms. McDaniel following postoperative care instructions, Bolt's paw continued to swell and emitted an unpleasant odor.

7. On October 26, 2013, Mr. McDaniel and his wife, Brittany McDaniel, presented Bolt to Dr. Zapalac. Dr. Zapalac informed the McDaniels that Bolt's bandage was extremely wet and attributed the moisture to the absorption of dew from grass the Bolt walked upon when he was taken outside in the mornings. Dr. Zapalac instructed the McDaniels to wrap a plastic bag around Bolt's leg when he was taken outside in the mornings. She also instructed the McDaniels to massage the paw for circulation. Dr. Zapalac rewrapped Bolt's leg and left a portion of his toes exposed.

8. Mrs. McDaniel massaged the paw several times between on October 26th and 27th. She then noticed that the paw was cold to the touch. Bolt also seemed to have lost feeling in the paw. The paw became more swollen and was secreting pus, which was leaking from the bandage. The McDaniels called the Hospital's emergency line and were instructed by Dr. Zapalac to remove the bandage, clean the wound, re-wrap it, and present Bolt the following day.

9. Mr. McDaniel brought Bolt to the Hospital on October 28th where he was seen by Respondent. Bolt was left at the Hospital for observation. Mr. McDaniel visited the Hospital on October 29th, 30th, and 31st. Respondent assured him at each visit that Bolt had good circulation and feeling in the foot and that Bolt would be able to keep his foot.

10. Bolt was hospitalized through November 3, 2013. On November 4, 2013, Respondent informed Mr. McDaniel that Bolt had chewed at his paw and that Respondent had sutured the Elizabethan collar to Bolt's neck due to his continued attempts to chew at his paw. Later that same day, at approximately 7:40 p.m., the McDaniels met Respondent at the Hospital to pickup Bolt. At pickup, they noticed that Bolt's paw was completely gone and that the bone was visible.

11. Bolt was immediately presented to April Guest Inman, D.V.M. at a 24 hour emergency

clinic, Sugar Land Veterinary Specialists. Dr. Inman stated that she had to administer methadone on presentation to remove the bandage and perform an examination of the foot. The methadone, however, was insufficient to alleviate pain, thus, she administered popofol.

12. Bolt's leg was amputated on November 6, 2013, by Loretta Bubenik-Angapen, D.V.M. of Sugar Land Veterinary Specialists. Dr. Bubenik-Angapen stated that the McDaniels told her that they did not receive instructions on bandage care and were told at some point to rewrap the bandage themselves. Dr. Bubenik-Angapen stated that she did not consider either of those actions to be appropriate practice. She further stated that she had never seen anyone suture an Elizabethan collar to a pet with umbilical tape. Her opinion is that referral early in the course of treatment would have been most appropriate because of the extensive vascular compromise, possible infection, and tissue loss.

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 paragraphs, Respondent has violated Rule 573.24, RESPONSIBILITY OF A VETERINARIAN TO REFER A CASE, of the Board's Rules of Professional Conduct, by failing to refer "Bolt" to another veterinarian.
3. Based on Findings of Fact 1 through 12 and Conclusions of Law 1 through 2, Respondent has violated Sections 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 practice 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.

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 further ORDERS that:

1. Respondent shall abide by the Rules of Professional Conduct, the Texas Veterinary Licensing Act, the laws of the State of Texas, and the laws of 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, JOHN STERN, 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.

John A. Stern, DVM
JOHN STERN, D.V.M.

12/8/14
DATE

STATE OF TEXAS §
COUNTY OF Fort Bend §

BEFORE ME, on this day, personally appeared JOHN STERN, 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 8th day of December, 2014

[Signature]
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 27 January, 2015.



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