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DOCKET NO. 2005-01

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

AGREED ORDER

On this the 14th day of October, 2004, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of Jack M. Burchers, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on September 1, 2004. The Respondent appeared without 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

"Diamond"

1. On July 10, 2003, Dawn M. Oswald, San Antonio, Texas, presented her seven-week old golden retriever puppy "Diamond" to the Rigsby Veterinarian Clinic, San Antonio, Texas. Jack M. Burchers, D.V.M., examined the puppy and administered initial vaccinations. The dog also had a cough. Dr. Burchers indicated that the cough was not a concern at the time. No fecal test was conducted.
2. On August 16, 2003, Ms. Oswald returned the puppy to Dr. Burchers for a second round of vaccinations. The dog was still coughing. Dr. Burchers said that the coughing should have cleared up by the second visit, and he prescribed the antibiotic Amoxicillin, one 250 milligram capsule twice a day. The prescribed antibiotic represented an overdose to a puppy the size of "Diamond."
3. Over the next several days, the puppy's health deteriorated. On August 21, 2003, Ms. Oswald presented the puppy to an emergency clinic, Perrin-410 Animal Hospital, San Antonio, Texas.

Thomas A. Ramsey, D.V.M., examined the dog upon presentation and noted that the dog was in a weakened state and had difficulty breathing. A fecal evaluation revealed intestinal parasites. Radiographs suggested possible pneumonia. He administered treatment which included new antibiotics, de-worming, a blood transfusion, and supportive care. William M. Pittman, D.V.M., a veterinarian at the emergency clinic, was also involved in the care of "Diamond."

4. Following the transfusion, the dog's condition seemed to improve, but she began vomiting in the evening and the emergency clinic told the Oswalds that the dog should be kept at the clinic overnight. Treatment continued on August 22nd, but the puppy died later in the evening.

5. Based on Findings of Fact 1 and 2, Dr. Burchers's failure to perform a fecal test as part of the patient's vaccination protocols and perform additional diagnostic tests on the patient when the coughing did not clear up in a five-week period, and his prescription of an excessive amount of Amoxicillin to the patient, do not represent 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 community in San Antonio, Texas, or similar communities.

"Gizmo"

6. On or around June 30, 2003, Dawn Oswald, San Antonio, Texas, presented her dog "Gizmo" to Jack M. Burchers, D.V.M., Rigsby Animal Clinic, San Antonio, Texas, because the dog was in labor. Dr. Burchers performed a caesarean section on the dog. Seven puppies were delivered, but three died at birth. Dr. Burchers also performed an ovariohysterectomy on "Gizmo." Pre-anesthesia blood work was not offered to Ms. Oswald. The incision was closed with catgut. Dr. Burchers reported that he maintained sedation with 5% Isoflurane throughout the procedure. No antibiotics were prescribed at discharge.

7. On July 7, 2003, Ms. Oswald again presented "Gizmo" to Dr. Burchers because the dog was bleeding from the incision site. Dr. Burchers noted that the dog had developed a hernia: Omentum was protruding from the incision site. After the hernia was repaired and the incision was closed, the dog stopped breathing. Dr. Burchers was unable to revive her.

8. Dr. Burchers failed to exercise the same degree of humane care, skill and diligence in treating "Gizmo" and her puppies as is ordinarily used in the same or similar circumstances by average members of the veterinary medical community in San Antonio, Texas, or similar communities, in the following particulars:

(a) No supportive fluid therapy was given to the dog prior to the surgeries. No pre-anesthesia blood work was suggested to the client. No written surgery consent forms were used. No antibiotics were prescribed at discharge. Dr. Burchers did not use all available means to revive the puppies, although Dopram was available in the clinic. Dr. Burchers did not use all available means, such as epinephrine, to revive "Gizmo" after the hernia surgery. The amount of Isoflurane used in the dog's surgery was excessive and could have led to fetal suppression.

(b) Dr. Burchers used catgut to suture the cutaneous and subcutaneous incisions following the ovariohysterectomy. The catgut could have contributed to the herniation. Newer and more effective suture materials are available.

9. Dr. Burchers did not maintain individual records for each of Ms. Oswald's dogs. The patient records contain no entries on the anesthesia procedures, anesthetic agents, medications, and other details of the surgeries. Details of any efforts to revive the dog and the puppies were not noted. Dr. Burchers' controlled substances log pages are not labeled by drug name.

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 5 and 8, 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 9, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct.

4. Based on Finding of Fact 9, Respondent has violated Rule 573.50, CONTROLLED SUBSTANCES RECORDS KEEPING FOR DRUGS ON HAND, of the Board's Rules of Professional Conduct.

5. Based on Findings of Fact 5, 8 and 9 and Conclusions of Law 1 through 4, 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 5, 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 Findings of Fact and Conclusions of Law, the Board ORDERS that Jack M. Burchers, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay a CIVIL PENALTY of ONE THOUSAND DOLLARS (\$1000.00), payable within 45 days of the date of this Order. If Respondent fails to pay the civil penalty within 45 days of the date of this Order, Respondent's license shall be SUSPENDED until the civil penalty is paid.

The Board further ORDERS that Respondent take and pass the Board's jurisprudence examination within 45 days of the date of this Order. If Respondent fails to take and pass the jurisprudence examination within 45 days of the date of this Order, Respondent's license shall be suspended until Respondent does take and pass the examination. Respondent may not re-take the examination any more frequently than 10 working days from the date of his last sitting for the examination. Should Respondent engage in the practice of veterinary medicine when under suspension, he will be subject to immediate disciplinary action.

The Board further ORDERS that during the next 12-month period, Respondent must take a minimum of six hours of continuing education courses as follows: two hours in practice management; two hours in surgery and anesthesia; and two hours in pharmacology.

The Board further ORDERS that Respondent submit to the Board copies of five patient records each month for six consecutive months, beginning the month after the date of this 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 his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein 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 is not 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.

I, **JACK M. BURCHERS**, 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.

Jack M Burchers
Jack M. Burchers, D.V.M.

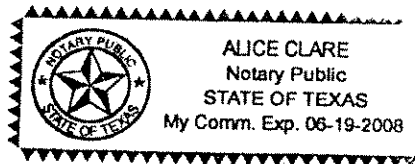
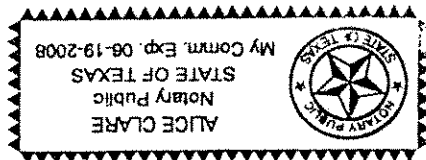
9/30/2004
Date

STATE OF TEXAS §
COUNTY OF Texas §
Brewer

BEFORE ME, on this day, personally appeared JACK M. BURCHERS, 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 30 day of Sept, 2004.

Alice Clare
Notary Public



SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 14th day of October, 2004.


Dee Pederson, D.V.M., President