DOCKET NO. 2006-03

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

AGREED ORDER

On this the 15th day of June, 2006 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of CLARENCE BROWN, D.V. M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on August 19, 2005. 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

1. On or around December 8, 2004, Marisol Rizo, Frisco, Texas, presented her six-month old puppy "Lucas" to the Lake Country Animal Hospital, Frisco, Texas, for a cryptochid castration, umbilical hernia repair, and rear dewclaw removal. According to Ms. Rizo, pre-surgery blood work showed that her dog was in good health. Clarence Brown, D.V.M., performed the surgery.

2. On December 9th, the dog appeared to be lethargic and experiencing inappetence. A blood panel run in the morning showed the dog was azotemic: values for BUN and creatinine were elevated. The patient was treated with fluid therapy, both intravenously and subcutaneously. Later in the day, BUN and creatinine were still elevated, and phosphorus and potassium were high, suggesting a blockage or inability to excrete urine. In addition, the white blood cell count was elevated, suggesting an inflammatory response.

3. On December 10th, Charles Proshek, D.V.M., a relief veterinarian, saw "Lucas" for the first time. The dog appeared to be mildly to moderately lethargic and mildly dehydrated. Dr. Proshek ran another blood panel which showed that BUN, creatinine, white blood cell count, and phosphorus values were higher than on December 9th. The dog had also developed diarrhea. Dr. Proshek resumed IV fluids and administered Cefazolin by IV. He gave Ms. Rizo a guarded

prognosis. In the late afternoon, the dog's abdomen became larger and he appeared unable to void. Dr. Proshek placed a urinary catheter which produced about 825 cc of blood tinged urine.

4. The patient records reflect another blood panel run on December 11th, which showed only a slight decrease in BUN and creatinine. White blood count was extremely high. There are no other entries in the patient records for December 11th, and no laboratory results or treatment notations at all for December 12th. Dr. Brown considered discussing the dog's condition with a specialist, but did not do so. "Lucas" died on December 13th, but there is no notation of that fact or of treatment received on that date. Dr. Brown performed a necropsy, and concluded as follows:

> "Necropsy Diagnosis: post-operation stress, possible compromise of immune system, peritonitis." Organ tissue was submitted for analysis, and the histopathology showed multifocal myocardial necrosis with mineralization. Under the Comment section, the report stated: "It is likely that the myocardial lesion was the primary cause of death."

5. At the informal conference on August 19th, the Board's conference committee members requested that Dr. Brown submit the dog's body to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for an independent necropsy. The TVMDL necropsy report was submitted to the Board on September 27, 2005. The necropsy revealed a .25 cm in diameter perforation of the urinary bladder. The pathology report contained the following entry:

> "URINARY BLADDER: Cystitis, fibrinopurulent and necrotizing, transmural, with accompanying focal fibrinopurulent peritonitis. HEART: Necrosis, subendocardial, multifocal with accompanying mineralization."

6. Dr. Brown did not answer repeated requests by the Board's staff for a narrative response to Ms. Rizo's allegations. Dr. Brown sent only the patient records and a written response by the relief veterinarian who provided post-surgery care, Dr. Charles Proshek. After the hearing, in response to a pending order, Dr. Brown finally submitted a narrative response to the allegations.

7. In summary, "Lucas" was presented for surgery on December 8, 2004. Twenty-four hours later he was in severe distress. Increased BUN, creatinine, and other measures suggested the following differentials: acute renal failure, adverse drug reaction, uroabdomen (leakage into the abdomen), and/or urinary blockage. Fluid treatment provided was appropriate for dehydration. The patient records are lacking in further diagnoses and treatment. The dog's inability to pass urine was not addressed. Myocardial necrosis and mineralization were indicative of possible urine leakage, although Dr. Brown said that he and the Board's investigator were told orally by the pathologist that the mineralization likely was "old" and present before the surgery. There is no notation of this opinion in the TVMDL pathology report, and a telephone conversation with the pathologist on March 1, 2006 failed to confirm the alleged statements about age of the

mineralization. Dr. Brown's pathology report mentions the presence of peritonitis, which supports a possible uroabdomen problem. With the sudden "crash" of the patient post-surgery, Dr. Brown should have consulted with a specialist to address necessary next steps. If there were leakage, it is unlikely that Dr. Proshek's placement of a catheter caused the leakage, because the patient was already showing signs of illness prior to the catheterization.

8. Dr. Brown's failure to properly diagnose and treat the patient does 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 Frisco, Texas, or similar communities.

9. Dr. Brown's patient records for "Lucas" are incomplete and vague and do not reflect treatments, diagnoses, differentials, anesthesia information, and other information reflecting the care of the dog.

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 4, 7 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 Findings of Fact 4 and 9, Respondent has violated Rule 573.52, PATIENT RECORD KEEPING, of the Board's Rules of Professional Conduct.

4. Based on Finding of Fact 6, Dr. Brown has violated Rule 573.74, DUTY TO COOPERATE WITH BOARD, of the Board's Rules of Professional Conduct, for his failure to timely submit a narrative account of the events surrounding his treatment of the dog "Lucas," as requested by the Board.

5. Based on 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 an administrative 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 CLARENCE BROWN, D.V.M., be FORMALLY REPRIMANDED.

The Board further ORDERS that Respondent pay an ADMINISTRATIVE PENALTY of ONE THOUSAND DOLLARS ($1,000.00), payable within 45 days of the date of this Order. If Respondent fails to pay the penalty within the 45 days, Respondent's license shall be suspended until the 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 the 45 days, 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:

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, CLARENCE BROWN, 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.

Clarence Brown, DVM — 3/24/06

Clarence Brown, D.V.M. — Date

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, on this day, personally appeared CLARENCE BROWN, 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 26 day of April, 2006.

Bonnie June Stuckey
Notary Public

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 15th day of June, 2006.

Robert Lastovica, DVM
Robert Lastovica, D.V.M., President