DOCKET NO. 2008-83

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

GENA VIATOR, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 11th day of June, 2009, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Gena Viator, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on July 29, 2008. The Respondent appeared and was represented by counsel, Don Ferrill, D.V.M. 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 her understanding of the alleged violations and the adequacy and sufficiency of the notice provided to her. This Agreed Order may be used in any future disciplinary actions by the Board against Respondent, but this Order is not admissible to establish liability in any civil action against the Respondent by a third party.

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


2. Dr. Viator examined “Smokey” and ordered a blood panel, urinalysis and radiographs. The radiographs revealed fluid density in the dog’s abdomen as well as mild pulmonary congestion in the chest. Dr. Viator administered 1 ml of Lasix SQ and dispensed 12.5 mg Lasix tablets to “Smokey” to be given twice daily starting the following morning, Friday, July 21, 2006. Dr. Viator did not address the vomiting in her treatment plan, nor provide any treatment for one of the main presenting symptoms. On Friday, July 21, 2006, “Smokey” continued to vomit and was...
excessively drinking water. Dr. Viator suggested placing ice cubes in the water bowl to slow down “Smokey’s” intake of water and the subsequent regurgitation. Dr. Viator reviewed the diagnostic tests and informed the Martins she believed “Smokey” was suffering from Cushing’s Disease. Dr. Viator scheduled “Smokey” to come in on Monday, July 24, 2006 for additional diagnostic tests. On Saturday, July 22, 2006, Mrs. Martin called Dr. Viator stating “Smokey” had vomited a foam appearing substance. Mrs. Martin also stated that “Smokey” was no longer drinking water. Dr. Viator stated she did not need to examine the vomit. Dr. Viator left the appointment set for Monday, July 24, 2006. On the morning of Sunday, July 23, 2006, the Martins found “Smokey” attempting to stand and then fall over. The Martins took “Smokey” to the VCA Fort Worth Animal Medical Center. “Smokey” died shortly after arriving. Dr. Jennifer Parsely, D.V.M. suspected renal failure, possibly due to antifreeze ingestion. On Monday, Mrs. Martin discussed the matter with Dr. Viator and picked up the medical records and radiographs.

3. Dr. Viator’s failure to examine “Smokey” on Saturday, July 22, 2006 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 profession in good standing in Ft. Worth, Texas or similar communities. Dr. Viator’s failure to examine “Smokey” led to additional pain and suffering for “Smokey” and delayed appropriate treatment.

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 1 through 3, 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 and Conclusions of Law 1 and 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:
   (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 Gena Viator, D.V.M., be INFORMALLY REPRIMANDED.

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 their understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein set forth herein, and agrees that they 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 their right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that they had the right to be represented by legal counsel in this matter.

Agreed Order 2008-83
Gena Viator, 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, GENA VIATOR, 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]
Gena Viator, D.V.M.

3-20-07
Date

STATE OF TEXAS
COUNTY OF ____________________

BEFORE ME, on this day, personally appeared GENA VIATOR, 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 20th day of March, 2007.

[Signature]
ROSANNA SYLVIA MEZA
Notary Public
STATE OF TEXAS
My Comm. Exp. March 17, 2012

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Gena Viator, D.V.M.
SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the June 11, 2009.

Bud E. Alldredge, Jr., D.V.M., President