DOCKET NO. 1999-17

IN THE MATTER § TEXAS STATE BOARD OF
OF THE LICENSE OF §
MICHAEL E. VOGT, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 8 day of October, 1999, came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board"), the matter of the license of Michael E. Vogt, D.V.M., (Respondent). Pursuant to the Veterinary Licensing Act (Act) § 18F and Board Rule 575.27, Respondent was sent a letter of invitation to appear at an Informal Conference that was held on May 6, 1999. Respondent waived his appearance at the Conference. The Board was represented at the Informal Conference by the 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 Agreed Order. In waiving an adjudicative hearing, Respondent acknowledges understanding of the alleged violations and the adequacy and sufficiency of the notice provided to him.

Upon 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. Michael E. Vogt, D.V.M., is a veterinarian licensed by the Board to practice veterinary medicine in the state of Texas under license number 5686, 1999 renewal certificate number 4100. Respondent is subject to prior disciplinary action by the Board.

2. The Board has jurisdiction over the subject matter and Respondent. Respondent has received all notice which may be required by law and by the Board Rules. All jurisdictional

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requirements have been satisfied.

3. On or about December 3, 1997, at approximately 11:00 am, Hawley Pfluger presented his seven year old mare, "Cash," to Michael Vogt, D.V.M., at Vogt Equine in San Angelo, Texas, requesting Dr. Vogt to palpate the mare to determine if she still had a cyst on her ovaries.

4. On or about that same day, Dr. Vogt examined "Cash." The horse was placed in a horse stock and a twitch was used to restrain the horse. Dr. Vogt put on a disposable plastic sleeve and applied lubricant, removed the sleeve to retie ropes on the stock, then put the sleeve back on, reapplied lubricant and performed a rectal palpation.

5. On or about that same day, at approximately 4:15 p.m., "Cash" was returned home by Mr. Pfluger. Upon exiting the horse trailer, the horse attempted to lie down. She was turned loose in the pasture, but at approximately 6:00 p.m. "Cash" was found down in the pasture. Mrs. Pfluger telephoned Dr. Vogt at her husband's direction and described the horse's symptoms. Dr. Vogt instructed the Pfluger's to give the mare the amount of Banamine they had on hand. Mr. Pfluger administered 10 cc. of Banamine at approximately 7:00 p.m. Shortly thereafter the mare urinated a thick and bloody discharge and Mr. Pfluger obtained and saved a sample.

6. On or about that same day, at approximately 8:00 p.m., Dr. Vogt arrived at the Pfluger's home. Dr. Vogt examined "Cash," and according to the patient records, found the "horse uneasy" with normal heart rate and normal stool odor. Dr. Vogt administered 1 cc. Rompun and 10 cc. Banamine. Dr. Vogt examined a discharge from the horse's nose but choose not to examine the urine sample. Additional Rompun and Banamine were prescribed by Dr. Vogt before he left the Pfluger's home, being of the opinion that the horse was recovering.

7. On or about that same day, at approximately 11:15 p.m., "Cash" was transported to another veterinary clinic and was dead on arrival at approximately 12:15 a.m., on or about December 4, 1997. A rectal exam was performed on the mare revealing a grade IV rectal tear at the ten o'clock position, approximately 12 - 14 inches inside the rectum. On or about December 4, 1997, at approximately 7:50 a.m., a necropsy of the mare revealed a perforated rectum with gross fecal contamination of the abdomen and subsequent peritonitis, with endotoxic shock appearing to be the cause of death.

8. The failure to timely and properly diagnose a perforated rectum and the failure to
properly treat “Cash” for a perforated rectum do not constitute the exercise of 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 San Angelo, Texas, or similar community.

9. The patient records for “Cash” do not contain entries of the diagnosis and treatment of the horse.

Conclusions of Law

1. Respondent is required to comply with the provision of the Act and Board Rules.

2. Section 14 (a)(5) of the Act authorizes the Board to revoke or suspend a license, impose a civil penalty, place a licensee on probation, or reprimand a licensee based upon findings that a licensee:

   . . .

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

3. Board Rule 573.22 - Professional Standard of Humane Treatment, of the Rules of Professional Conduct, requires license holders 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 their community, or similar community.

4. Based on Findings of Fact 3 through 8, Respondent has engaged in practices which violate the standards of professional conduct set out in Rule 573.22.

5. Board Rule 573.52 - Patient Record Keeping, of the Rules of Professional Conduct, requires a license holder to maintain patient records on each patient that include the diagnosis and treatments performed.

6. Based on Finding of Fact 9, Respondent has violated the standards of professional conduct set out in Rule 573.52.

7. Based on Conclusions of Law 1 through 6, Respondent is subject to disciplinary action by the Board under the Act §14(a)(5).

In the Matter of the License of Michael E. Vogt, D.V.M.
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NOW THEREFORE, THE BOARD AND RESPONDENT AGREE AS FOLLOWS:

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Michael E. Vogt, D.V.M., receive an OFFICIAL REPRIMAND and be assessed an administrative penalty in the amount of $500.00, under the following terms and conditions:

1. Respondent shall pay the administrative penalty within forty-five (45) days of the Board’s approval of the Agreed Order.

2. 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.

3. Respondent shall cooperate with the Board’s attorneys, investigators, compliance officers and other employees and agents investigating Respondent’s compliance with this order.

4. Failure by Respondent to comply with the terms of this Agreed Order or with any other provisions of the Act or the Board Rules, may result in further disciplinary action.

5. Respondent shall submit ten (10) different patient records each month of patients seen that month, for a period of six months, this period beginning the day that this Agreed Order is approved by the Board. The patient records shall be submitted to the Board in care of Mike Carroll, Investigator.

Respondent, by signing this Agreed Order, acknowledges his understanding of the Agreed Order, the notice, Findings of Fact and Conclusions of Law herein set forth, 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 of 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 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

In the Matter of the License of Michael E. Vogt, D.V.M.
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OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPON- 
DENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS 
A FINAL ORDER.

The date of this Agreed Order shall be the date it is adopted by the Texas State Board of 
Veterinary Medical Examiners.

I, MICHAEL E. VOGT, 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 THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND 
THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Michael E. Vogt, D.V.M. 
Respondent

STATE OF TEXAS $  
COUNTY OF ____________ $

BEFORE ME, on this day, personally appeared Michael E. Vogt, D.V.M., known to me to be 
the person whose name is subscribed to the foregoing Agreed Order, and acknowledged to me 
that he executed the same for the purposes stated therein.

Given under the hand and seal of office this 28 day of July, 1999.

MY COMMISSION EXPIRES 
7/31/99

Notary Seal

Peggy Guerrier
Notary Public

In the Matter of the License of Michael E. Vogt, D.V.M. 
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This agreed order has been entered between Michael E. Vogt, D.V.M. and Ron Allen, the Executive Director of the Texas State Board of Veterinary Medical Examiners, in concurrence with the Board Secretary. It is presented to the Board as a recommendation only.

RON ALLEN
Executive Director, TSBVME

DATE
August 9, 1999

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 7 day of October, 1999.

ROBERT I. HUGHES, JR., D.V.M.
President

In the Matter of the License of Michael E. Vogt, D.V.M.
Docket No. 1999-17
TEXAS STATE BOARD OF VETERINARY § TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS § LICENSE NO. 5686
vs.
§ 1999 RENEWAL CERTIFICATE
MICHAEL E. VOGT, D.V.M. § NUMBER 4100

COMPLAINT AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for Texas, on this day personally appeared Mike Carroll, who after being duly sworn, did depose and say:

On or about June 11, 1998, Mike Carroll, being an employee of the Texas State Board of Veterinary Medical Examiners, did in the course of such employment, make certain investigations into the professional conduct of one Michael E. Vogt, D.V.M., Vogt Equine, 6290 Stokes Road, San Angelo, Dallas, Texas, 76904, Veterinary License Number 5686, 1999 Renewal Certificate Number 4100, a practitioner of veterinary medicine in the State of Texas. As an employee of the Texas State Board of Veterinary Medical Examiners, I, Mike Carroll, do hereby present the following complaint against Michael E, Vogt D.V.M.

I.

Michael E. Vogt, D.V.M., is a veterinarian licensed by the Board to practice veterinary medicine in the state of Texas under license number 5686, 1999 renewal certificate number 4100. Respondent is subject to prior disciplinary action by the Board.

II.

The Board has jurisdiction over the subject matter and Respondent. Respondent has received all notice which may be required by law and by the Board Rules. All jurisdictional requirements have been satisfied.

III.

On or about December 3, 1997, at approximately 11:00 am, Hawley Pfluger presented his seven year old mare, “Cash,” to Michael Vogt, D.V.M., at Vogt Equine in San Angelo, Texas, requesting Dr. Vogt to palpate the mare to determine if she still had a cyst on her ovaries.

IV.

On or about that same day, Dr. Vogt examined “Cash.” The horse was placed in a horse stock and a twitch was used to restrain the horse. Dr. Vogt put on a disposable plastic sleeve and applied lubricant, removed the sleeve to retie ropes on the stock, then put the sleeve back on, reapplied lubricant and performed a rectal palpation.
V.

On or about that same day, at approximately 4:15 p.m., "Cash" was returned home by Mr. Pfluger. Upon exiting the horse trailer, the horse attempted to lie down. She was turned loose in the pasture, but at approximately 6:00 p.m. "Cash" was found down in the pasture. Mrs. Pfluger telephoned Dr. Vogt at her husband’s direction and described the horse’s symptoms. Dr. Vogt instructed the Pfluger’s to give the mare the amount of Banamine they had on hand. Mr. Pfluger administered 10 cc. of Banamine at approximately 7:00 p.m. Shortly thereafter the mare urinated a thick and bloody discharge and Mr. Pfluger obtained and saved a sample.

VI.

On or about that same day, at approximately 8:00 p.m., Dr. Vogt arrived at the Pfluger’s home. Dr. Vogt examined “Cash,” and according to the patient records, found the “horse uneasy” with normal heart rate and normal stool odor. Dr. Vogt administered 1 cc. Rompun and 10 cc. Banamine. Dr. Vogt examined a discharge from the horse’s nose, but choose not to examine the urine sample. Additional Rompun and Banamine were prescribed by Dr. Vogt before he left the Pfluger’s home, being of the opinion that the horse was recovering.

VII.

On or about that same day, at approximately 11:15 p.m., “Cash” was transported to another veterinary clinic and was dead on arrival at approximately 12:15 a.m., on or about December 4, 1997. A rectal exam was performed on the mare revealing a grade IV rectal tear at the ten o’clock position, approximately 12 - 14 inches inside the rectum. On or about December 4, 1997, at approximately 7:50 a.m., a necropsy of the mare revealed a perforated rectum with gross fecal contamination of the abdomen and subsequent peritonitis, with endotoxic shock appearing to be the cause of death.

VIII.

The failure to timely and properly diagnose a perforated rectum and the failure to properly treat “Cash” for a perforated rectum do not constitute the exercise of 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 San Angelo, Texas, or similar community.

IX.

The patient records for “Cash” do not contain entries of the diagnosis and treatment of the horse.

X.

Respondent is required to comply with the provision of the Act and Board Rules.
XI.

Section 14 (a)(5) of the Act authorizes the Board to revoke or suspend a license, impose a civil penalty, place a licensee on probation, or reprimand a licensee based upon findings that a licensee:

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law;

XII.

Board Rule 573.22 - Professional Standard of Humane Treatment, of the Rules of Professional Conduct, requires license holders 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 their community, or similar community.

XIII.

Based on paragraphs III through VIII, Respondent has engaged in practices which violate the standards of professional conduct set out in Rule 573.22.

XIV.

Board Rule 573.52 - Patient Record Keeping, of the Rules of Professional Conduct, requires a license holder to maintain patient records on each patient that include the diagnosis and treatments performed.

XV.

Based on paragraph IX, Respondent has violated the standards of professional conduct set out in Rule 573.52.

XVI.

Based on paragraphs X through XV, Respondent is subject to disciplinary action by the Board under the Act §14(a)(5).
ARTICLE 8890, SECTION 14

(a)...the Board may revoke or suspend a license, impose a civil penalty, place a person whose license has been suspended on probation, or reprimand a licensee...if it finds that a licensee:

(5) has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with the law;

The foregoing complaint is submitted to the Secretary of the Texas Board of Veterinary Medical Examiners on this the 14th day of MAY 1999.

Further, Affiant sayeth not.

Mike Carroll, Affiant

SUBSCRIBED and SWORN TO before me by the said Mike Carroll this the 14th day of MAY 1999.

Charles A. Adkins, Notary Public in and for Texas

The foregoing Complaint is hereby filed and docketed with the Texas State Board of Veterinary Medical Examiners and styled Texas State Board of Veterinary Medical Examiners vs. Michael E. Vogt, D.V.M. under Docketed Number 1999-17 this the 20th day of MAY 1999.

Lynn Lawson, DVM, Board Secretary
Texas State Board of Veterinary Medical Examiners
TEXAS STATE BOARD OF VETERINARY § TEXAS VETERINARY MEDICAL
MEDICAL EXAMINERS § LICENSE NO. 5686
vs. § 1999 RENEWAL CERTIFICATE
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XV.

Based on paragraph IX, Respondent has violated the standards of professional conduct set out in Rule 573.52.

XVI.

Based on paragraphs X through XV, Respondent is subject to disciplinary action by the Board under the Act §14(a)(5).