DOCKET NO. 2016-168

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

MICHAEL VOGT, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the ___ day of October, 2014, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board" or "TBVME") the matter of the license of Michael Vogt, D.V.M. ("Respondent"). Pursuant to Section 801.408 of the Texas Occupations Code, and Board Rule 575.29, an informal conference was held on June 28, 2016. Respondent did not attend the informal conference. 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 understanding the alleged violations and the adequacy and sufficiency of the notice provided.

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. 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. In 2014, Cathy Derington-Felty requested Dr. Vogt to examine her mare, Sugar, after a difficult unload from a trailer. Dr. Vogt instructed a barn worker to trot Sugar. Dr. Vogt then pulled a crystal from his pocket and diagnosed Sugar’s right hind leg with an inflamed stifle. Ms. Derington-Felty then transported her horse to another veterinarian where Sugar was checked for lameness. Sugar was diagnosed with inflamed hocks, but cleared of any problem with her stifles.
4. Dr. Vogt was called to Ms. Derington-Felty’s barn to conduct a pregnancy exam on Fargo, Ms. Derington-Felty’s mare. Dr. Vogt pulled a crystal from his pocket, held the crystal over the mare, and declared that she was in foal. When Ms. Derington-Felty requested that Dr. Vogt palpate Fargo, he did so and stated that there was no foal present.

5. Dr. Vogt’s records for Ruby and Sugar do not contain:
   a. Identification of patient, including species, breed, age, sex, or description;
   b. Patient history;
   c. Differential diagnosis;
   d. Other details necessary to substantiate or document the exam, diagnosis, or treatment provided, or
   e. A signed acknowledgment relating to alternative therapies.

6. On April 24, 2015, Ms. Derington-Felty contacted Dr. Vogt, informing him that she thought strangles might be present in a barn where she was boarding two of her horses. Dr. Vogt contacted the barn’s owner and manager to inform them of Ms. Derington-Felty’s concern. Dr. Vogt also informed the barn’s owner that Ms. Derington-Felty had an unpaid veterinary bill. The barn’s owner gave Ms. Derington-Felty one week to remove her horses from the barn.

7. Dr. Vogt did not submit records for Fargo.

8. The Board investigator assigned to the case sent opening documentation regarding the complaints to Dr. Vogt on October 14, 2015. The investigator left a voice mail for Dr. Vogt on October 20, 2015. Dr. Vogt returned the call on November 4, 2015. Dr. Vogt told the investigator that he would need months to respond to the complaints. Dr. Vogt was unwilling to provide a definitive date by which he would provide a response to the complaint.

9. The investigator called Dr. Vogt on November 16, 2015, to request a date by which the TBVME would receive his written response. Dr. Vogt stated he needed a few more weeks. On December 17, 2015, the investigator left Dr. Vogt a voice mail requesting that Dr. Vogt return the call.

10. As of January 5, 2016, Dr. Vogt had not responded to previous requests for a response. Accordingly, TBVME issued a subpoena for Dr. Vogt’s response with a deadline of January 15, 2016, at 9:00 a.m.

11. As of January 20, 2016, Dr. Vogt had not responded to the subpoena. The investigator made face-to-face contact with Dr. Vogt at Dr. Vogt’s residence. Dr. Vogt confirmed that he had received the previously mailed correspondence and the subpoena. Dr. Vogt stated that he would submit his written response by January 29, 2016.
12. On January 22, 2016, the TBVME Director of Enforcement called and left a voice mail for Dr. Vogt, instructing him to return her call. Dr. Vogt did not return the voice mail left on January 22.

13. Dr. Vogt’s written response was received by TBVME on January 29, 2016.

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 3-4, Respondent has violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board’s Rules of Professional Conduct, by using a crystal for diagnosis and, thus, failing to exercise the same degree of humane care, skill, and diligence in treating patients as are 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 5, Respondent has violated Rule 573.52, VETERINARIAN PATIENT RECORD KEEPING, of the Board’s Rules of Professional Conduct, by failing to make and maintain adequate records, and Rule 573.15, ALTERNATE THERAPIES--HOLISTIC MEDICINE, by failing to obtain a signed statement from the client consenting to the use of an alternate therapy.

4. Based on Finding of Fact 6, Respondent has violated Rule 573.28, OBSERVANCE OF CONFIDENTIALITY, of the Board’s Rules of Professional Conduct, by discussing his care for an animal with a third party without the client’s authorization.

5. Based on Finding of Fact 7-13, Respondent has violated Rule 573.75, DUTY TO COOPERATE WITH BOARD, of the Board’s Rules of Professional Conduct, which states that a licensee shall cooperate fully with any Board inspection or investigation and respond within twenty-one days of receipt to requests for information regarding complaints, unless the licensee is unable for good cause to meet the response date and requests a different response date.

6. Based on Findings of Fact 1 through 13 and Conclusions of Law 1 through 5, Respondent has violated Sections 801.402(6) (prohibiting violations of Board rules), and Sections 801.353(a) and 801.402(21) (prohibiting a veterinarian from violating the confidential relationship between a veterinarian and the veterinarian’s client) of the Veterinary Licensing Act 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;
...
(21) violates Section 801.353 or a rule adopted by the board related to confidentiality.

801.353. CONFIDENTIALITY; WAIVER. (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

7. Based on Conclusions of Law 1 through 6, 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.

8. Based on the above Conclusions of Law, Respondent may be disciplined in the manner set out in Section 801.451, IMPOSITION OF ADMINISTRATIVE PENALTY, of the Veterinary Licensing Act, which authorizes an administrative penalty for violations of the Act and Board rules.

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 Respondent's license be SUSPENDED for two years, with said SUSPENSION STAYED and Respondent placed on PROBATION for the entire period of SUSPENSION.

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Michael Vogt, D.V.M.
The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, which is the date this Order is signed by the Board, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

In addition, the Board ORDERS that Respondent complete THREE (3) hours of IN-PERSON continuing education in the area of recordkeeping, in addition to the seventeen required annually for renewal of Respondent's license to practice veterinary medicine, within one year of the date the Board approves this Order. Documentation of the completion of the continuing education penalty shall be received within thirty (30) days after one year of the date the Board approves this Order. If Respondent fails to provide documentation of completion within thirty (30) days of one year of the date the Board approves this Order, Respondent's license may be suspended until the continuing education penalty is completed and documentation is received by the Board.

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 understanding the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees to 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 the right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges having understood 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.

Signature page follows.
I, MICHAEL 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 THAT THIS ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Michael Vogt, D.V.M.  

8-5-16  

DATE

STATE OF TEXAS  

COUNTY OF  

BEFORE ME, on this day, personally appeared Michael Vogt, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me executing the same for the purposes stated therein.

Given under the hand and seal of office this 5th day of August, 2016.

BERNICE GASPERSON  
Notary Public, State of Texas  
My Commission Expires November 10, 2019  

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 18th day of Oct., 2016.

Roland Lenarduzzi, D.V.M., Board President

Received  
AUG 10 2016

Texas State Board of  
Veterinary Medical Examiners

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Michael Vogt, D.V.M.