AGREED ORDER

On this the 21 day of July, 2015, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of MARY WHEAT, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code, and Board Rule 575.29, an informal conference was held on March 30, 2015. Respondent did attend the informal conference and was represented by counsel, Caleena Svatek. 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.

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. Respondent, MARY WHEAT, D.V.M. of Nash, Texas, holds Texas veterinary license 10269.

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. On April 10, 2014, Jill Conway ("Mrs. Conway") of Texarkana, Texas brought her two-year-old male Weimaraner breed canine named "Amos" and her one-year-old male Great Dane breed canine named "Ice Cream" to Respondent ("Dr. Wheat") at the Ark La Tex Spay & Neuter
Clinic in Nash, Texas ("Clinic"). Ms. Conway brought Amos and Ice Cream to Dr. Wheat for Respondent to perform neuter procedures on them both.

4. Amos died after the anesthetic was administered, but before the surgery was started. The Board has received information from Darla Owens ("Ms. Owens"), former employee of the Clinic, that Amos was sedated and then left without anyone supervising Amos in the surgery room. The Board has also received information from Dana Pipes ("Ms. Pipes"), another former employee of the Clinic, that Amos was readied for surgery and then the veterinary technician went to the mail box leaving the animal unmonitored in the surgery room. Directly after the veterinary technician returned to the surgery room from the mail box, a medical emergency occurred and she saw that Amos was not breathing.

5. When Ms. Conway went to the Clinic to see Amos, she also asked to see Ice Cream. She was told Ice Cream wasn't ready to leave. After Ms. Conway left, Respondent performed a second surgery due to Ice Cream's bleeding. She did not tell Ms. Conway about the second surgery or bleeding until the informal conference. Further, the second surgery is not documented in Ice Cream's records.

6. Ms. Conway later picked up Ice Cream. Respondent released him while he was still unconscious and non-ambulatory, as he had to be carried to Ms. Conway's car. Further, Ice Cream was unconscious at home until 6:30 p.m.

7. Ice Cream developed a post-surgical infection within four days of Respondent completing the neuter procedure. Ice Cream's infection was treated at the Isbell Vet Services in Arkansas for the infection on April 14, 2014. Dr. Isbell noted that there was moderate swelling of the dog's scrotum and that the incision site was inflamed and necrotic. After Dr. Isbell debrided the necrotic tissue from the incision, cleaned the site, injected some drugs into the area, and dispensed antibiotics, Ice Cream's infection seemed to have cleared.

8. Respondent's medical records lack routes of administration and concentrations for drugs administered, temperatures for the animals, details necessary to substantiate any examinations, and appear to have alterations or supplementations that were not added contemporaneously and are not indicated with a time and date of the amendment or alteration. The records further lack information detailing the second surgery for Ice Cream. Finally, the records appear to have portions deleted by "white-out," however, Respondent is not able to provide the original records for inspection by the Board to attempt to determine what information was deleted.

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 the above Findings of Fact, Respondent has violated Rule 573.10, SUPERVISION OF NON-VETERINARIANS, which requires a licensed veterinarian to properly delegate care and/or treatment duties to a non-veterinarian.

3. Based on the above Findings of Fact, Respondent violated Rule 573.22, PROFESSIONAL STANDARD OF CARE, of the Board's Rules of Professional Conduct, by 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.

4. Based on the above Findings of Fact, Respondent has violated Rule 573.27, HONESTY, INTEGRITY AND FAIR DEALING, of the Board's Rules of Professional Conduct, by performing surgery on Ice Cream without knowledge of or permission from the client.

5. Based on the above Findings of Fact, Respondent violated Rule 573.52, VETERINARY PATIENT RECORDKEEPING, of the Board's Rules of Professional Conduct, by failing to include the temperature of the patient; name/dosage/concentration/and route of administration of each drug prescribed administered, and dispensed; details necessary to substantiate the examination/diagnosis/treatment provided, and/or surgical procedure performed; the identity of the veterinarian who practiced veterinary medicine on the animal; the time, date, clear indication of all amendments, supplantations, changes, or corrections in a patient record; and each differential diagnosis and/or treatment.

6. Based on the above Findings of Fact and Conclusions of Law, Respondent has violated Sections 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 practice or conduct that violates the board’s rules of professional conduct.

7. Based on the above Conclusions of Law, 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.

(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 pay, within forty-five (45) days of the date the Board approves this Order, and administrative penalty in the amount of TWO THOUSAND DOLLARS ($2000.00). If Respondent fails to pay the restitution within forty-five (45) days of the date of this Order, enforcement action will be taken. Further, if Respondent fails to pay the administrative penalty within 45 days of the date that the Board approves this Agreed Order, 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 an additional SIX (6) hours of continuing education, three (3) hours in RECORDKEEPING and three (3) hours in anesthesia, within one year of the date of 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 forty-five (45) 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 Respondent shall take and pass the Texas veterinary jurisprudence examination within 90 days from the date the Board approves this Agreed Order.

The Board further ORDERS that:

Agreed Order 2015-050
MARY WHEAT, D.V.M.
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 her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, and agrees that she 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 her right to a formal hearing and any right to seek judicial review of this Agreed Order. Respondent acknowledges that she had 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.

I, MARY WHEAT, 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.

Mary E. Wheat, D.V.M.

DATE: 4-20-15

MARY WHEAT, D.V.M.
STATE OF TEXAS  
COUNTY OF  BOWIE  

BEFORE ME, on this day, personally appeared MARY WHEAT, D.V.M., known to me as the person whose name is subscribed to the foregoing document, and acknowledged to me that she executed the same for the purposes stated therein.

Given under the hand and seal of office this  20th day of  April, 2015

DIANNA GRiffin  
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the  21st day of  July, 2015

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