DOCKET NO. 2002-60

IN THE MATTER OF § TEXAS STATE BOARD OF
THE LICENSE OF §
J. ELROY WHITWORTH, D.V.M. § VETERINARY MEDICAL EXAMINERS

AGREED ORDER

On this the 17th day of October, 2002 came on to be considered by the Texas State Board of Veterinary Medical Examiners ("Board") the matter of the license of J. Elroy Whitworth, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on September 19, 2002. The Respondent attended 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 September 13, 2001 Cathy Olive, Del Valle, Texas, presented her Shetland pony ("Rusty") to J. Elroy Whitworth, D.V.M., Bastrop, Texas because the pony was suffering from an abscessed tooth that was draining. The pony had been on antibiotics for about 45 days. After examining the pony, Dr. Whitworth recommended pulling the tooth. Surgery was scheduled for that afternoon.

2. At about 6:08 p.m. on the same day, Ms. Olive received a message on her recorder that "Rusty" had come through the surgery well and was alert and back in his stall. At 10:02 a.m. the next morning (September 14) Ms. Olive called the clinic and Dr. Whitworth told her that the pony had eaten a paper towel and some shavings and was choking when offered hay. He then said he was going to take care of the problem.

3. At 1:59 p.m. on September 14, Ms. Olive received a call on her cell phone from Dr. Whitworth who stated that "Rusty" was still choking and that Dr. Whitworth's attempts at scooping and flushing to remove the obstruction was unsuccessful. Dr. Whitworth suggested that Ms. Olive return home and hook up her horse trailer and wait for him to contact her as to whether
she might have to take the pony to the Texas A&M large animal clinic. Ms. Olive called Dr. Whitworth at 2:40 p.m. and was told to come get the horse for transport to the large animal clinic.

4. When Ms. Olive arrived at Dr. Whitworth’s clinic, she observed that the pony appeared to be drawn in and dehydrated. She took the pony to the large animal clinic and arrived there about 5:00 p.m. The clinic veterinary staff expressed concern that “Rusty” had not arrived sooner. Endoscopy was performed by Mark Gallardo, D.V.M., Francisco C. Rodriguez, D.V.M., and Tex S. Taylor, D.V.M. The veterinarians stated that the pony’s situation was indeed an emergency situation. The veterinarians removed a paper towel from the pony’s throat along with a fragment of the tooth that had been extracted by Dr. Whitworth.

5. On September 19, 2002 the pony was presented to the Capital Veterinary Clinic, Austin, Texas for colic. Sara Elaine McClain, D.V.M., examined the pony and found no significant problems. Banamine was administered and by the next day, Ms. Olive reported that “Rusty” had begun eating again. Dr. McClain saw the pony on September 25, 2001 and again on October 17, 2001. The surgical site appeared to be healing nicely and no throat scarring was noted.

6. The acts and/or failures to act alleged in Findings of Fact 2 through 5, and more specifically, Dr. Whitworth’s allowing a paper towel and tooth fragment to lodge in the pony’s throat following surgery, 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 Bastrop, Texas or similar communities.

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 2 through 6, 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 2 through 6 and Conclusions of Law 1 through 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 a civil 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 J. Elroy Whitworth, 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 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 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 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. 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 HERELN. 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, J. ELROY WHITWORTH, 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.

J. Elroy Whitworth, D.V.M.

10/1/02

DATE

STATE OF TEXAS
COUNTY OF

BEFORE ME, on this day, personally appeared J. Elroy Whitworth, 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.

POLLY W. FRUSHAY
Notary Public, State of Texas
My Commission Expires
APRIL 28, 2006

Given under the hand and seal of office this 1st day of OCTOBER, 2002.

SIGNED AND ENTERED by the TEXAS STATE BOARD OF VETERINARY MEDICAL EXAMINERS on this the 17th day of OCTOBER, 2002.

Martin Garcia, D.V.M., President