DOCKET NO. 2009-79

IN THE MATTER OF § TEXAS BOARD OF

THE LICENSE OF § VETERINARY

CHERYL ZENGLER, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 2nd day of October, 2009, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Cheryl Zengler, D.V.M. ("Respondent"). Pursuant to §801.408 of the Veterinary Licensing Act and Board Rule 575.27, an informal conference was held on July 13, 2009. Respondent appeared at the conference in person and with her attorney, Keith O'Connell. The Board was represented at the conference by the Board's Enforcement Committee.

Respondent 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 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. On Saturday, September 27, 2008, Vicki Gordon of San Antonio, Texas, presented "Kasili," a fourteen year old male Pug to Cheryl Zengler, D.V.M. ("Respondent"), O'Connor Road Animal Hospital ("OCRAH") of San Antonio, Texas, following an attack by Ms. Gordon's other household dogs. The attack left "Kasili's" right eye partially severed, and required an emergency enucleation. "Kasili" was already blind in his left eye, and suffered from a herniated disk and kidney/liver problems. Ms. Gordon discussed "Kasili's" preexisting medical issues with Respondent prior to the surgery. "Kasili's" pre-operative blood profile was within normal ranges.

2. The surgery (and a dental cleaning) were performed. Following the surgery, however, "Kasili's" temperature dropped to 94.1 degrees. He was placed on a heating pad set to "low" with a towel layered in between. A heating lamp was placed in front of "Kasili's" cage. At 2:00 p.m. that afternoon, Respondent and her technicians left the clinic. At 4:30 p.m., Respondent's technicians returned to the clinic. "Kasili's" breathing was labored and his body temperature was 105.9 degrees. Respondent instructed the technicians to begin to cool "Kasili" in a tub, and to rub his pads with alcohol. At 4:47, Kasili's temperature was 107.6 degrees. By 5:08, Kasili's
temperature was 101.3 degrees, but he had suffered a heatstroke.

4. Over the next two weeks, "Kasi" developed a bacterial infection. He also had a scabby patch under his left armpit, which Respondent diagnosed as a "hot spot" on October 10, and treated accordingly. The "hot spot" did not heal with treatment, and on October 20, Respondent re-diagnosed the area as a thermal burn and treated it accordingly. Ms. Gordon then decided to take "Kasi" to his primary doctor, Dr. Julie Strickert, who diagnosed him with a kidney infection. "Kasi's" condition deteriorated over the next several days and he stopped eating. On October 29, "Kasi" was euthanized by Dr. Strickert.

5. Leaving "Kasi" (blind, elderly, sedated and immobile) unattended with two heat sources in post-surgical recovery for 2.5 hours, resulted in severe heat stroke and thermal burns and 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 San Antonio, Texas, and led to unnecessary pain and suffering for "Kasi."

6. Based on Paragraphs 1-5, Respondent violated Rule of Professional Conduct §573.22 PROFESSIONAL STANDARD OF HUMANE TREATMENT and §801.402 of the Veterinary Licensing Act prohibiting practices in violation of Board Rules.

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, Respondent has violated Rule of Professional Conduct §573.22, PROFESSIONAL STANDARD OF HUMANE TREATMENT, 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 1 & 2 and Conclusions of Law 1 & 2, Respondent has violated §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 §801.401 if the person:

(6) engages in practices or conduct that violates the board’s rules of professional conduct.

5. Based on Conclusions of Law 1-4, Respondent is subject to disciplinary action under §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 §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 Respondent be FORMALLY REPRIMANDED. The Board further ORDERS that Respondent pay and provide documentation of said payment to the Board, within 30 days of the date of this Order, RESTITUTION of ONE THOUSAND, TWO HUNDRED, THIRTEEN & 81/100 DOLLARS ($1,213.81) to Vicki Gordon. If Respondent fails to pay the restitution within 30 days of the date of this Order, enforcement action will be initiated pursuant to the Act and the Rules.

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.

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Cheryl Zengler, D.V.M.
Respondent, by signing this Agreed Order, acknowledges her understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein 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. The effective date of this Agreed Order shall be the date it is adopted 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. 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.

I, CHERYL ZENGLER, 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.

Cheryl Zengler, D.V.M.

Date 3/4/09

STATE OF TEXAS
COUNTY OF Collin

BEFORE ME, on this day, personally appeared CHERYL ZENGLER, 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 4th day of August, 2009.

Denise Seay Godding
Notary Public

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 26th day of October, 2009.

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

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Cheryl Zengler, D.V.M.