

SOAH DOCKET NO. 578-10-3701

**TEXAS BOARD OF VETERINARY
MEDICAL EXAMINERS,
PETITIONER**

V.

**RODGER CLAXTON, D.V.M.,
RESPONDENT**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Veterinary Medical Examiners (Board) initiated disciplinary action against Rodger Claxton, D.V.M. (Respondent) for failure to report sufficient continuing education hours as required by TEX. OCC. CODE ANN. § 801.307 and 22 TEX. ADMIN. CODE § 573.64. Staff recommended Respondent be required to complete and report the remaining required 17 hours of continuing education, and be assessed an administrative penalty of \$1,000. The Administrative Law Judge (ALJ) agrees with the recommendation.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing convened on June 21, 2010, before ALJ Tommy Broyles, at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The Board was represented by Staff Attorney Laura Moriaty. Respondent did not appear and was not represented at the hearing.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Staff moved for a default. In accordance with the State Office of Administrative Hearings' rules, the default is granted and the allegations in the notice of hearing are deemed true.

II. CONTINUING EDUCATION DELINQUENCY

Under TEX. OCC. CODE ANN § 801 (the Act), the Board is authorized to enact rules requiring the reporting of continuing professional education.¹ The Board's rules require a license holder to complete at least 17 hours of acceptable continuing education (CE) annually.² License holders must report credit hours attesting to the fact that the required CE hours have been obtained.³ Respondent violated the rule of professional conduct by failing to report a sufficient number of CE hours for the reporting period. Staff requested that Respondent be required to complete any remaining hours (17) of CE, and that a \$1,000 penalty be imposed for non-compliance with the Board's CE requirements.⁴

III. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ grants Staff's motion for default, deems the facts contained within Board's Notice of Hearing admitted, and recommends that Respondent be ordered to complete and report the remaining 17 hours of CE for calendar year 2008. Additionally, the ALJ recommends a \$1,000 penalty be imposed for non-compliance with the Board's CE requirements.

IV. FINDINGS OF FACT

1. The Texas Board of Veterinary Medical Examiners (Board) regulates the profession of veterinarians and conducts investigations into allegations or violations of the Act and Board Rules.
2. Rodger Claxton (Respondent) is licensed to practice veterinary medicine in the State of Texas.

¹ TEX. OCC. CODE ANN. § 801.307 and 22 TEX. ADMIN. CODE (TAC) § 573.64.

² 22 TAC § 573.64(a).

³ 22 TAC § 573.64(b).

⁴ TEX OCC. CODE ANN. §§ 801.451-2.

3. On January 29, 2008, Respondent renewed and reactivated his Texas veterinary license and was given 12 months to obtain and report 34 hours of continuing education (CE).
4. On June 16, 2009, Respondent submitted proof of having completed 17 of the required 34 CE hours.
5. Respondent has not completed and reported the remaining 17 CE hours for calendar year 2008, and he has not requested any exemption.
6. On April 15, 2010, staff of the Board (Staff) mailed the Notice of Hearing (NOH) for this matter to Respondent at [REDACTED] Albuquerque, NM, 87106, by United States Post Office regular mail and by certified mail, return receipt requested.⁵ This is the address shown as the last known address of Respondent per the records of the Board. The NOH mailed by certified mail was returned to Staff as "unclaimed;" however, the NOH sent by regular mail was not returned.⁶
7. The NOH contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
8. The NOH contained the following language in at least 12-point boldface type: "[U]pon failure of a party to appear at the hearing, the factual allegations in the Notice will be deemed admitted as true, and the relief sought in the Notice of Hearing may be granted by default."
9. The NOH set forth that the Board was seeking an administrative penalty of \$1,000, and completion of 17 hours of CE.
10. The hearing on the merits convened on June 21, 2010, at the State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, Austin.
11. Respondent did not appear and was not represented at the hearing.
12. Following the admission of evidence establishing proper jurisdiction and notice, Staff moved for a default, which is granted.


⁵ This address was used to send correspondence to Respondent on February 1, 2010 and February 23, 2010, in which the postal receipt was signed (February 1st signed personally by Respondent).

⁶ *Id.*

V. CONCLUSIONS OF LAW

1. The Texas Board of Veterinary Medical Examiners (Board) has jurisdiction and authority to take disciplinary action against Respondent. TEX. OCC. CODE ANN. (Code) ch. 801.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the complaint and of the hearing on the merits was provided as required by Code § 801.407 and by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Board had the burden of proving the case by a preponderance of the evidence.
5. Pursuant to 1 TEX. ADMIN. CODE § 155.501, the failure of Respondent to appear at the hearing on the merits entitled the Board to have the facts in the Notice of Hearing deemed admitted and to the declaration of default by Respondent.
6. Based on the above Findings of Fact, Respondent violated CODE § 801.307 and 22 TAC § 573.64 by failing to complete and report 17 hours of continuing education.
7. The Board is authorized to impose an administrative penalty on a person who violates chapters or rules adopted by the Board. TEX. OCC. CODE ANN. §§ 801.451-452.
8. Based on the above Findings of Fact and Conclusions of Law, the Board should issue an order that Respondent complete and report the remaining 17 hours of continuing education, and impose a \$1,000 penalty for non-compliance with its continuing education requirements.

SIGNED August 17, 2010.



TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS