

DOCKET NO. 2017-080

IN THE MATTER OF § TEXAS BOARD OF
THE LICENSE OF § VETERINARY
KEVIN ACUNA, D.V.M. § MEDICAL EXAMINERS

AGREED ORDER

On this the 8 day of December 2016, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Kevin Acuna, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board's staff met on October 24, 2016, to consider alleged violations of the Veterinary Licensing Act and the Board's rules by Respondent.

Respondent, without admitting the truth of the findings and conclusions set out in this Agreed Order, wishes to waive a conference under Section 801.2056 and thereby dispose of the compliance issues set out below. Respondent agrees to comply with the terms and conditions set forth in this Order. In waiving the right to a conference, Respondent acknowledges understanding of the alleged violations and the adequacy and sufficiency of notice.

Upon the recommendation of the Staff 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, Kevin Acuna, D.V.M., of Nacogdoches, Texas, holds Texas veterinary license 12865.
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 March 23, 2016, Board investigators conducted an on-site inspection of Respondent at Eastex Veterinary Clinic in Nacogdoches, Texas. The inspection revealed that Respondent did not have an accurate balance on hand for ketamine, torbugesic, or tramadol.
4. The controlled substance log showed a recorded balance of 560.92mls for ketamine, but the actual balance on hand was 491mls. This means that the facility was missing 69.92mls of ketamine. The controlled substance log showed a recorded balance of 535.56mls for torbugesic, but the actual balance on hand was 407mls. This means that the facility was missing 128.56mls of torbugesic. The controlled substance log showed a recorded balance of 4,949.5 tablets for tramadol, but the actual balance on hand

was 3,300 tablets. This means that the facility was missing 1,649.5 tablets of tramadol. Because of these inaccuracies, Respondent could not adequately monitor whether diversion was occurring.

5. At the time of the inspection, Respondent did not hold a DEA registration. At the time of the inspection, Respondent did not order controlled substances for the facility.
6. Respondent does not have prior violations of a similar nature.

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 573.50, CONTROLLED SUBSTANCES RECORDS KEEPING FOR DRUGS ON HAND, of the Board's Rules of Professional Conduct, by failing to maintain a correct log balance for controlled substances on hand.
3. Based on the above Conclusions of Law, 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 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.

5. 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.

6. Based on the above Findings of Fact and Conclusions of Law, and given the nature and severity of the violations, Respondent's violations are Class B violations under Rule 575.25, RECOMMENDED SCHEDULE OF SANCTIONS, and Respondent is subject to discipline under that Rule.

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 INFORMALLY REPRIMANDED.

The Board ORDERS that Respondent pay, within 45 days of the date the Board approves this Order, an ADMINISTRATIVE PENALTY of TWO HUNDRED AND FIFTY DOLLARS (\$250.00). If Respondent fails to pay the administrative penalty within 45 days of the date the Board approves this Order, the Board may apply any payment to the Board to renew a license to pay any outstanding administrative fee owed to the Board.

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 understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law herein 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 that Respondent 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.

The effective date of this Agreed Order shall be the date it is adopted by the Board.

Signature page follows.