

DOCKET NO. 2013-02

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

AGREED ORDER

On this the 25th day of March, 2013, came to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of Mikel L. Athon, D.V.M. ("Respondent"). Pursuant to Section 801.2056, Texas Occupations Code, a committee of the Board's staff met on September 24, 2012 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 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 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, Mikel Athon, D.V.M. of Cedar Hill, Texas, holds Texas veterinary license 6379.
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. Respondent owns and operates the Mobile Animal Care Clinic ("Clinic") in Cedar Hill, Texas. Respondent is the only veterinarian on staff at the Clinic.

4. On November 11, 2011, Respondent developed a large pulmonary embolism in his right lung and underwent surgery. He was unable to return to practice while he recovered. On or about November 18, 2011, Respondent went to Hawaii to complete his recovery.

5. During this time, the Clinic remained open, despite the fact that there was no veterinarian present on the premises. Brandon Beasley and Amy Hunt, unlicensed veterinary technicians, performed veterinary medicine on Clinic patients without veterinary supervision, and treated patients that Respondent had not examined and with whom Respondent therefore did not have a veterinarian-client-patient relationship.

6. While Respondent was in Hawaii and there was no other veterinarian present at the Clinic, unlicensed staff vaccinated a total of 46 animals. No veterinarian was on the premises at the time the unlicensed staff members diagnosed the need for the vaccines, dispensed the vaccines and administered the vaccines. On November 21, 2011, Mr. Beasley administered vaccines, including a rabies vaccination, to "Draino," a cat belonging to Wendy Whaling. No veterinarian was on the premises at the time Mr. Beasley diagnosed the need for the vaccines, dispensed the vaccines and administered the vaccines to "Draino." No veterinarian was present to sign the rabies certificate, as is required by Texas state law.

7. While Respondent was in Hawaii and no other veterinarian was present at the Clinic, Mr. Beasley euthanized five animals. On November 22, 2011, Mr. Beasley euthanized "Strider," a ten year old male Blue Heeler owned by Vicki Alexander. On November 29, 2011, Mr. Beasley euthanized "Morticia," a cat owned by David and Karen Roper. On December 1, 2011, Mr. Beasley euthanized "Abby" and "Beau," two cats owned by Cheryl Clanton. On December 12, 2011, Mr. Beasley euthanized "Lilredd," a five year old female Border Collie owned by Sandi Carder. For each of these euthanizations, Mr. Beasley determined a diagnosis and prognosis for the animal, and then prescribed, dispensed and administered controlled substances without veterinary supervision.

8. While Respondent was in Hawaii and no other veterinarian was present at the Clinic, unlicensed staff diagnosed and treated 20 animals for anal gland and ear problems.

9. The patient records for the treatment of the patients described above did not identify any veterinarian who performed or supervised the treatment recorded, and lacked any notes to substantiate examinations prior to vaccination.

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 1 through 9, Respondent has violated Rule 573.10, SUPERVISION OF NON-LICENSED EMPLOYEES, by allowing unlicensed staff members to

practice veterinary medicine without his supervision, including making diagnosis and prognosis of animal diseases and/or conditions; prescribing and administering vaccinations, including rabies vaccinations; performing rabies vaccinations without a veterinarian present to supervise and sign the required official rabies certification; prescribing, dispensing and administering prescription drugs, including controlled substances; and performing euthanasia without a veterinarian present to provide immediate supervision.

3. Based on Findings of Fact 1 through 9, Respondent has violated Rule 573.11, RESPONSIBILITY FOR UNLICENSED AND LICENSED EMPLOYEES, by failing to ensure that all persons Respondent employed and supervised who practiced veterinary medicine were licensed and met the requirements for controlled substance registration with the Texas Department of Public Safety and the federal Drug Enforcement Administration.

4. Based on Findings of Fact 1 through 9, Respondent has violated Rule 573.41, USE OF PRESCRIPTION DRUGS, by allowing his clinic staff to dispense and administer prescription drugs to animals with whom he had not established a veterinarian-client-patient relationship by examining the animal in person.

5. Based on Findings of Fact 1 through 9, Respondent has violated Rule 573.51, RABIES CONTROL, by allowing an unlicensed person to administer rabies vaccines without his direct supervision and by failing to properly complete rabies certificates with a signature from the veterinarian directly supervising the vaccination.

6. Based on Findings of Fact 1 through 9, Respondent has violated Rule 573.52, PATIENT RECORDKEEPING, by failing to identify the veterinarian who performed or supervised the procedure recorded, and by failing to include details necessary to substantiate the treatment or examination performed.

7. Based on Findings of Fact 1 through 9, Respondent has violated Section 801.351 of the Veterinary Licensing Act, Texas Occupations Code, which prohibits a veterinarian from treating an animal without first establishing a veterinarian-client-patient relationship, and states that a veterinarian-client-patient relationship cannot be established solely by telephone or electronic means.

8. Based on Findings of Fact 1 through 9 and Conclusions of Law 1 through 7, Respondent has violated Sections 801.402 (4) and (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:...

(4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;...

(6) engages in practice or conduct that violates the board's rules of professional conduct

9. Based on Conclusions of Law 1 through 8, 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: (a)

- (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.

10. Based on Conclusions of Law 1 through 8, 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's license be SUSPENDED for TWO YEARS, with said SUSPENSION STAYED and Respondent placed on PROBATION for the entire period of SUSPENSION.

The Board ORDERS that Respondent pay, within 45 days of the date of this Order, an ADMINISTRATIVE PENALTY of TWO THOUSAND DOLLARS (\$2000.00). If Respondent

fails to pay the administrative penalty within 45 days of the date of this Order, Respondent's license may be suspended until the penalty is paid, and any payment by the Respondent to the Board to renew his license will be applied toward the payment of any administrative fee owed to the Board, and further enforcement action may be taken.

The Board further ORDERS that Respondent shall take and pass the Texas veterinary jurisprudence examination within 90 days from the date of this Agreed Order.

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 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 his understanding of the Agreed Order, the notice, and Findings of Fact and Conclusions of Law set forth herein, 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. 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, MIKEL ATHON, 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.

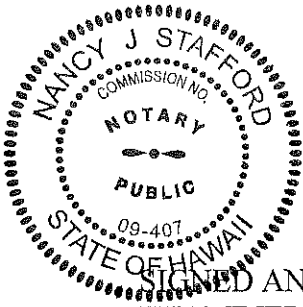
Mikel Athon
MIKEL ATHON, D.V.M.

10-23-2012
DATE

STATE OF ~~TEXAS~~ Hawaii §
COUNTY OF Hawaii §

BEFORE ME, on this day, personally appeared Mikel Athon, 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.

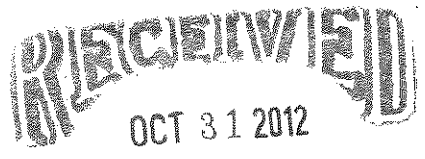
Given under the hand and seal of office this 23 day of October, 2012



Nancy J. Stafford
Notary Public Nancy J. Stafford
My Com. Exp. 10/4/13

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 25th of March, 2013

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



TEXAS STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

Document Date: October 23, 2012 # of Pages: 7

Notary Name: Nancy J. Stafford Third Circuit

Document Description: Texas Board of Veterinary
Medical Examiners

Nancy J. Stafford 10/23/12
Nancy J. Stafford, Notary Public Date

My Commission Expires: October 4, 2013

