## **DOCKET NO. 2008-02**

IN THE MATTER OF

**TEXAS BOARD OF** 

THE LICENSE OF

VETERINARY

DAVID CARLTON, D.V.M.

δ MEDICAL EXAMINERS

## AGREED ORDER

On this the 11th day of October, 2007, came on to be considered by the Texas Board of Veterinary Medical Examiners ("Board") the matter of the license of David Carlton, D.V.M. ("Respondent"). Pursuant to Section 801.408, Texas Occupations Code and Board Rule 575.27, an informal conference was held on August 20, 2007. The Respondent was not represented by 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 December 17, 2005, Kelly Delany, Allen, Texas, presented her dog "Titus" to David Carlton, D.V.M., Dallas, Texas for routine vaccinations and complaint of lethargy and loss of strength and coordination. A previous diagnosis was idiopathic epilepsy with secondary osteoarthritis, and the dog had been on phenobarbital since that diagnosis. prescribed Deramax for apparent hip joint issues. In mid-March, 2006, "Titus" was presented to an emergency clinic for pain, extreme loss of weight and strength. Several other trips were made to the emergency clinic and to Dr. Carlton, but no one was able to identify any specific cause of the pain and loss of weight. During the visits in 2006, Dr. Carlton opined that the long-term effects of the epilepsy were causing muscular deterioration, but a specific diagnosis was not made and no treatment recommendations were made. In April, 2006, Dr. Carlton stated that Ms. Delaney should simply monitor the dog's condition until July.
- 2. On April 21, 2006, "Titus" was presented to the North Plano Animal Hospital for further

diagnoses. Holly Kiernicki, D.V.M., and Marijean Grunewald, D.V.M., examined the dog and noted the symptoms of inability of the dog to open his mouth, breakthrough seizures, and weight Blood work revealed anemia, hypoalbuminemia, neutrophilia, monocytosis, and The dog was then referred to Kelly Nitsche, D.V.M., at the Animal Diagnostic Center in Dallas. Dr. Nitsche diagnosed immune-mediated polymyositis and IBS/lymphangectasia. Prednisone was dispensed. On May 9, 2006, Ms. Delaney told Dr. Grunewald that the dog seemed to feel much better on corticosteroids. However, on May 10<sup>th</sup> "Titus" was presented to North Plano for vomiting and seizures. "Titus" had eaten garbage. including a rubber glove, Kleenex, q-tips, etc. The dog died on May 10<sup>th</sup>. determined cause of death to be peritonitis due to intestinal perforation. Jay Hoffman, D.V.M., pathologist at the Texas Veterinary Medical Diagnostic Laboratory, concluded that the dog's chronic wasting was due to severe intestinal disease and cardiac disease. Dr. Grunewald opined that eating foreign objects induced vomiting, which in turn ruptured the dog's diseased intestine leading to his death. The cardiac disease made it less likely that the dog would survive such an ordeal.

3. From December 2005 through April 2006 the patient was seen by Dr. Carlton multiple times, yet no second opinion was requested or referral made during this period although the dog's condition was deteriorating. This action/inaction 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 Dallas 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 Finding of Fact 3, 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 3 and Conclusions of Law 1 and 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 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 David Carlton, 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, and Findings of Fact and Conclusions of Law herein 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. 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.

I, DAVID CARLTON, D.V.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I I UNDERSTAND THAT THIS ORDER CONTAINS THE SIGN IT VOLUNTARILY. ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

David Carlton, D.V.M.

STATE OF TEXAS

COUNTY OF Collin

BEFORE ME, on this day, personally appeared DAVID CARLTON, 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 1st day of October

SHARON L. SELLINGER MY COMMISSION EXPIRES

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 11th day of October, 2007
14th February, 2008

Patrick Allen, DVM Vice-f