

**SOAH DOCKET NO. 578-16-2016  
TBVME DOCKET NO. DK2015-184**

IN THE MATTER OF	§	TEXAS BOARD OF
THE LICENSE OF	§	VETERINARY
JANINE CHARBONEAU-McINNIS, D.V.M.	§	MEDICAL EXAMINERS

**FINAL DECISION AND ORDER**

On this day the Texas Board of Veterinary Medical Examiners (“Board”) considered the matter of the license of Janine Charboneau-McInnis, D.V.M. (“Respondent”).

On August 31, 2016, the Board filed a Notice of Hearing (“NOH”) and First Amended Formal Complaint with the State Office of Administrative Hearings (“SOAH”). The NOH and First Amended Formal Complaint were sent to the address listed in the Board’s records for Respondent, by certified mail, return receipt requested, and by email.

On September 14, 2016, a hearing convened at SOAH, located at the William B. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. The hearing was presided over by Administrative Law Judge (“ALJ”) Roy Scudday. Respondent appeared and represented herself. The ALJ filed a Proposal for Decision (“PFD”) on October 25, 2016, containing Findings of Fact and Conclusions of Law and a recommended penalty. The PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. On December 28, 2016, the ALJ issued an Exceptions Letter, which recommended no changes to the PFD.

On March 28, 2017, the Board convened in a regular meeting held pursuant to the Open Meetings Act, Tex. Govt. Code § 551.071 and Tex. Occ. Code § 801.407(d). Board Member Janie Carpenter, D.V.M., recused herself from consideration of the PFD. The remaining Board members voted unanimously to adopt the Findings of Fact contained in the PFD, with the exception of Findings of Fact No. 7 and No. 10, which were modified to correct technical errors. These Findings of Fact, along with the specific reasons and legal bases for the modifications, are set forth below. The remaining Board members voted unanimously to adopt the Conclusions of Law contained in the PFD. These Conclusions of Law are set forth below. The remaining Board members voted unanimously to adopt the recommended penalty, with modified conditions and requirements which the Board determined were necessary. The terms of the penalty, and the specific reasons and legal bases for the modifications to the recommended penalty, are set forth below.

**Findings of Fact**

1. On January 18, 1984, the Texas Board of Veterinary Medical Examiners (Board)

issued Texas Veterinary License No. 5423 to Janine Charboneau-McInnis, D.V.M. (Respondent).

2. On April 23, 2015, Respondent was convicted of a violation of Texas Penal Code (Pen. Code) § 42.092 in a case styled *The State of Texas vs. Janine Joyce Charboneau*, Cause No. 006-80751-2012, in the County Court at Law No. 6, Collin County, Texas, of the Class A misdemeanor offense of Cruelty to Non-Livestock Animals/Failure to Provide for an incident that occurred on November 16, 2011. Defendant was placed on community probation for a period of two years. On January 8, 2016, the Fifth Court of Appeals of Texas upheld the conviction of Respondent.
3. On August 31, 2015, staff of the Board (Staff) mailed a Notice of Hearing based on its First Amended Formal Complaint. The Notice of Hearing 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 factual matters asserted.
4. On January 29, 2016, Staff filed a Motion for Partial Summary Disposition (Motion) to which Respondent filed a response. On February 19, 2016, Administrative Law Judge (ALJ) Roy G. Scudday issued Order No. 1 granting partial summary disposition pursuant to 1 Texas Administrative Code (TAC) § 155.505(a), on the grounds that there was no genuine issue as to any material fact regarding Respondent's misdemeanor conviction for Cruelty to Non-Livestock Animals/Failure to Provide. Order No. 3 issued by the ALJ on March 10, 2016, modified the partial summary disposition.
5. The hearing on appropriate sanctions convened on September 14, 2016, before ALJ Scudday in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties participated in the hearing. The record closed at the conclusion of the hearing.
6. For over 20 years Respondent has been practicing veterinary behavioral medicine, an area of practice that is provided by very few people. She has been listed in *Who's Who in Veterinary Science and Medicine* and *Notable Women of Texas*.
7. At the time of the incident Respondent was 56 years old and in chronic pain because of scarring around the nerves of the spinal cord as a result of a prior surgery. During the time of the incident, her condition had flared up due to her heat intolerance causing her to suffer a seizure.
8. During the three-and-a-half-year period between the incident and her conviction, Respondent practiced at a veterinary clinic in Dallas and also served as a mobile vet

without any complaints. Her practice consisted of performing physical examinations of animals and consulting with the owners regarding behavior modification, but not keeping animals in her unsupervised custody. During that period most of the animals she saw were referred to her by other veterinarians.

9. While the use of medications for animals during behavioral modification is only a last resort, it is sometimes necessary to do so in order to protect it and its family from injury. Often medication needs to be immediately administered and cannot wait for a referral to another veterinarian.
10. Respondent has had no complaints regarding her veterinary practice during her entire license history. She remains on probation until March 2017, and is compliant with the terms of her probation, having undergone a psychiatric evaluation and paid all the required fees. She is currently unable to practice while on probation because of the condition that she not possess any animals. Respondent is currently undergoing psychological counseling.
11. Respondent is described by clients and friends as a trustworthy, knowledgeable, and caring person whom they would not hesitate to have care for their dogs or cats during their absence.

#### **Changes to Findings of Fact**

##### Finding of Fact No. 7

The ALJ found that “during the time of the incident, [Respondent’s] condition had flared up due to her heat intolerance causing her to suffer a seizure.” The board determined that this Finding of Fact should be changed due to a technical error. Under Section 2001.058(e), Government Code, the Board may change a Finding of Fact made by the ALJ if the agency determines that a technical error in a finding of fact should be changed. Respondent’s testimony and Exceptions to the Proposal for Decision indicate that Respondent has never suffered a neurological seizure. Any mention of a “seizure” referred to the seizure of animals from Respondent’s custody. Thus, the Board changes Finding of Fact No. 7 to remove the clause “causing her to suffer a seizure.”

##### Finding of Fact No. 10

The ALJ found that Respondent “remains on probation until March 2017.” The Board determined that this Finding of Fact should be changed due to a technical error. Under Section 2001.058(e), Government Code, the Board may change a Finding of Fact made by the ALJ if the agency determines that a technical error in a finding of fact should be changed. Staff’s Exhibit No. 4, the Order of Judgment issued by County Court at Law No. 6, which was duly admitted during the contested case hearing, indicates that Respondent remains on probation until April 27, 2017. Thus, the Board changes Finding of Fact No. 10 to indicate that Respondent remains on probation until April 27, 2017.

### Conclusions of Law

1. The Board has jurisdiction over this matter. Tex. Occ. Code (Code) §801.401.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 22 Tex. Admin. Code§ 557.30.
3. Notice of the complaint and of the hearing on the merits was provided as required. Tex. Gov't Code. §§ 2001.051, .052.
4. Because Respondent was convicted under Pen. Code § 42.092, the Board has the statutory authority to subject Respondent to disciplinary action. Code § 801.402(18).
5. Despite her conviction, Respondent is fit to practice veterinary medicine. Code §§ 53.022, .023; 22 TAC§ 575.50(d).

### Modifications to Recommended Penalty

The ALJ recommended in the PFD that the Board suspend Respondent's license for two years beginning upon the completion of Respondent's criminal probation, but that the period of suspension be fully probated, subject to such restrictive conditions or requirements which, at the discretion of the Board, are determined to be necessary.

Section 801.401(c), Occupations Code, authorizes the Board to require a license holder whose license suspension is probated to limit practice to the areas prescribed by the Board. The Board determined that it was necessary for Respondent to limit her area of practice to behavioral medicine with no patients in her unsupervised custody, and to practice only in a clinic with at least one other licensed veterinarian who agrees to provide general supervision of Respondent's practice. These conditions are consistent with the ALJ's rationale contained in the PFD. Respondent has not practiced veterinary medicine for approximately two years, and practiced primarily in the area of behavioral medicine for a substantial period of time prior to her criminal probation. These conditions would ensure that Respondent's practice during her probation is consistent with the standards expected of licensed veterinary professionals.

Section 801.401(c), Occupations Code, authorizes the Board to require a license holder whose license suspension is probated to participate in continuing professional education until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation. The Board determined that it was necessary for Respondent to complete six hours of continuing education in the area of animal welfare. This condition would ensure that Respondent

understands the gravity of her violation and would deter future violations by Respondent.

Section 801.401(c), Occupations Code, authorizes the Board to require a license holder whose license suspension is probated to report regularly to the Board on matters that are the basis of the probation. The Board determined it was necessary for Respondent to provide quarterly reports to the Board certifying that she has complied with the terms of her probation. These reports must include certification from Respondent's supervising veterinarian that Respondent has complied with the terms of her probation. This condition would allow the Board to properly monitor Respondent's compliance.

### Terms of Order

#### 1. SUSPENSION AND PROBATION

a. Respondent's license shall be suspended for two years, beginning the first day following the completion of Respondent's criminal probation, or upon the effective date of this Order, whichever is later, with said suspension stayed and Respondent placed on probation for the entire period of the suspension.

i. During the period of probation, the following terms shall apply:

1. Respondent shall limit Respondent's practice of veterinary medicine to practice in a clinic with at least one other licensed veterinarian who agrees to provide general supervision of Respondent's practice. "General supervision" shall have the meaning provided by Section 573.80(7) of the Board's Rules. Respondent shall notify all present and prospective supervising veterinarians of this Order. Respondent shall cause supervising veterinarians to provide written acknowledgement to the Board that they have read and understood the Order. This acknowledgement must be provided within 30 days of the effective date of the Order for present supervising veterinarians, or within 15 days of undertaking a new supervising veterinarian. This acknowledgment shall be submitted to the Texas Board of Veterinary Medical Examiners at 333 Guadalupe Street, Suite 3-810, Austin, Texas 78701.

2. Respondent shall limit Respondent's practice of veterinary medicine to behavioral medicine with no patients in her unsupervised custody. "Unsupervised custody" shall mean any interaction with a patient in which the client or another veterinary professional is not physically present on the same premises as the Respondent. "Behavioral medicine" shall be limited to physical examinations of patients, consultations with clients regarding behavior modification, and the

prescription of medications as necessary for behavior modification. This Order does not permit Respondent to represent herself as a specialist in behavioral medicine unless she otherwise satisfies the definition of a "specialist" provided by Section 573.80(11) of the Board's Rules.

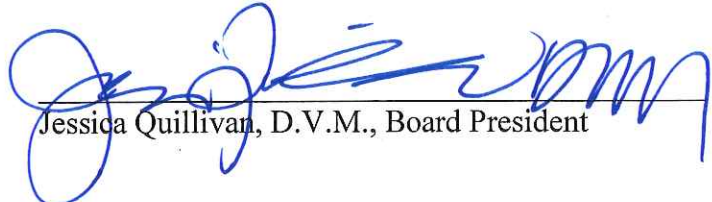
3. Respondent shall submit quarterly reports to the Board certifying compliance with this Order. These reports shall include a certification of compliance by Respondent's supervising veterinarian. Reports shall be submitted to the Texas Board of Veterinary Medical Examiners at 333 Guadalupe Street, Suite 3-810, Austin, Texas 78701.
- b. If Respondent does not timely and satisfactorily comply with any of the terms of this Order, the Board may rescind Respondent's probation pursuant to Board Rule 575.36.

## 2. CONTINUING EDUCATION

- a. In addition to the annual continuing education required for license renewal, Respondent shall complete six (6) hours of continuing education in the area of animal welfare within one year of the date the Board approves this Order. Respondent shall submit documentation of the completed continuing education penalty and the required annual continuing education to the Board within one year and 30 days of the date the Board approves this Order. Documentation shall be submitted directly to the Texas Board of Veterinary Medical Examiners at 333 Guadalupe Street, Suite 3-810, Austin, Texas 78701.

The effective date of this Final Decision and Order shall be on the date of expiration of the period for filing a motion for rehearing, if such a motion is not timely filed, or if a motion for rehearing is timely filed, on the date the order overruling the motion for rehearing is signed or on the date the motion is overruled by operation of law.

SIGNED AND ENTERED by the TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS on this the 28th of March, 2017.

  
Jessica Quillivan, D.V.M., Board President