

SOAH DOCKET NO. 578-11-8656

**TEXAS BOARD OF VETERINARY
MEDICAL EXAMINERS**

V.

RANDAL DANIELS, D.V.M.

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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) seeks disciplinary action against Randal Daniels, a veterinarian licensed by the Board. Staff alleges that Dr. Daniels failed to comply with an agreed order. Staff seeks revocation of Dr. Daniels' license. The Administrative Law Judge (ALJ) finds that Dr. Daniels failed to comply with the agreed order and recommends revocation of his license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested, and those matters are addressed only in the Findings of Fact and Conclusions of Law. The hearing convened September 12, 2011, with ALJ Wendy Harvel presiding, and the record closed the same day. Assistant General Counsel Tyler Vance represented Staff. Dr. Daniels represented himself.

II. UNDISPUTED FACTS

Most of the relevant facts were undisputed. In March 2010, Dr. Daniels signed an agreed order (2010 Agreed Order) that required him to enter a five-year peer assistance program contract. In July 2010, Dr. Daniels requested that his license be placed on inactive status, which was done. While on inactive status, Dr. Daniels was not required to comply with the terms of the order. In March 2011, Dr. Daniels requested to be placed back on active status. The Board agreed to place him back on active status, but only with Dr. Daniels participating in the peer assistance program. Dr. Daniels signed an agreed order in 2011 (2011 Agreed Order) that reduced the term of his peer assistance program to two years, required him to participate in an

evaluation, and required him to comply with all terms of the peer assistance program contract. Dr. Daniels participated in an evaluation with a licensed chemical dependency counselor. She made several recommendations for Dr. Daniels' treatment. Based on her recommendations, a professional recovery network contract was drafted requiring Dr. Daniels to participate in individual therapy, attend Alcoholics Anonymous meetings, abstain from drugs and alcohol, have random drug screenings, and participate in certain other programs for two years.¹ Dr. Daniels did not sign the contract.

III. EVIDENCE

A. Staff's Evidence

Staff presented two witnesses. Michael Miller, the Board's chief investigator, testified that Dr. Daniels never signed the peer assistance contract and has therefore, not complied with the terms of the 2011 Agreed Order. Courtney Bolin, a social worker at the Professional Recovery Network, testified that Dr. Daniels obtained a clinical evaluation on April 16, 2011. Following the evaluation, she sent him a contract on May 6, 2011, based on the recommendations of the evaluator. She testified that he did not sign the contract.

B. Dr. Daniels' Evidence

Dr. Daniels does not deny that he refused to sign the contract. He testified at the hearing that he does not have a substance abuse problem. He contends that he has been drug-free since his knee surgery resolved all pain issues in January 2010. He believes he has an issue of "jurisprudence" and not substance abuse. He testified that the peer review contract seems inappropriate because he should not be required to attend Alcoholics Anonymous meetings, and he should not be "labeled" as a substance abuser. He presented a copy of his assessment performed by Jan McCutcheon, a licensed chemical dependency counselor, as evidence.² He also has some concerns about the financial costs of complying with the order.

¹ Petitioner Ex. 3.

² Respondent Ex. 1.

IV. ANALYSIS AND RECOMMENDATION

Whether Dr. Daniels has a substance abuse problem is not the issue in this case. The issue is whether he has complied with the terms of the 2011 Agreed Order. Dr. Daniels voluntarily signed and agreed to the 2011 Agreed Order. The order requires Dr. Daniels to participate in the peer assistance program. It also indicates that if he does not comply with the order, further disciplinary action may be taken. He has not complied, despite having been given several opportunities to sign the peer assistance contract. At the hearing, Dr. Daniels reaffirmed that he would not sign the contract. Because Dr. Daniels has not complied with the terms of the 2011 Agreed Order, his license should be revoked. Should the Board determine that Dr. Daniels should continue to be provided the opportunity to participate in the peer assistance program, the Board could suspend his license until such time as he has complied with the 2011 Agreed Order.

V. FINDINGS OF FACT

1. Randal Daniels holds a veterinarian's license issued by the Texas Board of Veterinary Medical Examiners (Board).
2. On August 8, 2011, Board staff (Staff) sent its Notice of Hearing to Dr. Daniels. The notice was received on August 11, 2011.
3. 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 matters asserted.
4. The hearing convened on September 12, 2011, at the State Office of Administrative Hearings (SOAH).
5. Assistant General Counsel Tyler Vance represented Staff. Dr. Daniels represented himself.
6. In March 2010, Dr. Daniels signed an agreed order requiring him to participate in a five-year peer assistance program.
7. Rather than participate in the program, Dr. Daniels and Staff agreed to place his license on inactive status.
8. In March 2011, Dr. Daniels requested that his license be placed back on active status.

9. Staff agreed to activate Dr. Daniels' license if Dr. Daniels would enter the peer assistance program.
10. In March 2011, Dr. Daniels signed an agreed order (2011 Agreed Order) requiring him to participate in and comply with the peer assistance program.
11. Dr. Daniels received an evaluation as part of the peer assistance program requirements, but has not signed and continues to refuse to sign, the peer assistance contract required by the peer assistance program.
12. By not signing the peer assistance contract, Dr. Daniels has violated the terms of the 2011 Agreed Order.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ch. 801.
2. SOAH has jurisdiction over the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Proper and timely notice of the hearing was provided. TEX. GOV'T CODE ch. 2001; 22 TEX. ADMIN. CODE § 213.10.
4. Dr. Daniels violated board rules by failing to comply with the terms of the 2011 Agreed Order. 22 TEX. ADMIN. CODE § 573.62.
5. The Board may revoke a license for a violation of a board rule. TEX. OCC. CODE §§ 801.401, 801.402(6).
6. Dr. Daniels' license should be revoked.

SIGNED September 21, 2011.


WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS